
CANADA / JUDGMENT

Kim v. Hong

2013 BCSC 587

COURT

Supreme Court of British Columbia

DECIDED

5 April 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 587 Kim v. Hong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kim v. Hong,

2013 BCSC 587

Date: 20130405

Docket: E090851

Registry: Vancouver

Between:

Yang Soon Kim, also known as Jane Kim

also known as Jane Hong, also known as

Yang Soon Kim Hong

Claimant

And

Sang Ho Hong

Respondent

Before: The Honourable Madam Justice S. Griffin

Reasons for Judgment

Counsel for the Claimant:

Ian B. Hayward

Counsel for the Respondent:

Paul Daltrop

Jesse Desilets

Place and Date of Trial:

Vancouver, B.C.

June 4-8, 11-15, & 18-22, 2012

August 7-10, & 27-31, 2012

Further Written Submissions:

December 12 & 21, 2012

Further Appearance/Argument:

February 7, 2013

March 12, 2013

Place and Date of Judgment:

Vancouver, B.C.

April 5, 2013

TABLE OF CONTENTS

Introduction. 4

Issues. 6

Analysis. 7

Findings on Credibility and Reliability. 7

The Sook Account 9

The Respondent's Post-Separation Rent and Other Transactions. 10

The Ilsan Apartment 11

The Respondent's Document Production. 14

General Legal Principles on Property Division. 16

1. Which if any of the Korean assets are family assets?. 18

Overview of Korean Properties. 18

The Parties' Intentions. 19

Use of Korean Assets to Fund Lifestyle and Assets in Canada.	19
Paldal Property.	22
Jangan and Anjung Properties.	24
Suwon business.	24
Ilsan Apartment	28
Dongtan/Bansong Properties.	31
Jungnam Property.	32
Dongoh-ri Land.	33
Korean pension.	33
Korean Term Deposit	33
Key Money.	34
Summary of Findings Regarding the Korean Assets.	36
Conclusion regarding Korean Assets.	43
2. What is the Total Value of the Korean Assets Held by the Respondent?.	43
Suwon business.	45
Total Value of Korean Assets.	49
Conversion rate.	50
3. What is the Value of the Allison Road Property?.	50
4. What is the Value of the Other Canadian Assets?.	51
Broughton Street Property Proceeds of Sale.	51
Cordova Street Property Proceeds of Sale.	51
The Respondent's RRSP.	51
The Gordon Smith Paintings.	52
Baby Grand Piano and Household Furnishings.	52
Total Value of Canadian Family Assets.	52
5. How Should the Family Assets be Divided?.	52
(a) Debt	54
(b) Gifts and Inheritance.	56

(c) Advances and Expenditures Post-Separation. 58

Advances to the claimant 63

Respondent's Advances or Other Dissipation of Assets. 64

Conclusions Regarding Property Division. 68

6. What is the Respondent's Income and Should Income be Imputed to him?. 70

Expenses. 78

7. What is the Claimant's Income, and Should Income be Imputed to her?. 80

8. What is an Appropriate Amount of Child Support, Retroactive and Ongoing, that should be paid by the Respondent?. 81

(a) Approach to Child Support 81

(b) Base child support for the son. 82

(c) What is an Appropriate Amount for Extraordinary Expenses for the Son's Support?. 83

(d) Child Support for the Parties' Daughter 84

9. What is an Appropriate Amount of Spousal Support, Retroactive and Ongoing, that should be paid by the Respondent?. 86

10. Should the Respondent be Permitted to take the Parties' Son on a Trip to Korea? 87

11. Other Issues. 91

General Comments. 91

Conclusions. 93

Introduction

[1] This matrimonial proceeding involves primarily property and support issues.

[2] The respondent was born in 1959 and the claimant was born in 1960 in Korea. They married in Korea in 1988. In 2000, they moved to Vancouver. They separated in January 2009.

[3] On March 24, 2009, this court made a declaration that there was no reasonable prospect of reconciliation pursuant to s. 57 of the Family Relations Act, R.S.B.C. 1996, c. 128 ("FRA"). This is the triggering event for the purposes of determining family assets under the FRA.

[4] The couple have two children. Their daughter, born in 1990, is attending university in another province in Canada. Their son, born in 1998, is attending private school in Vancouver.

- [5] What brings this couple to court is largely a dispute regarding the respondent's assets in Korea and his income. All references to Korea in these reasons are intended to refer to South Korea.
- [6] The respondent owned various Korean properties as at the triggering event, March 24, 2009, which were assets gifted to him by his father while his father was alive, or as a bequest on his death, the latter being a cattle farming business known as Suwon (the "Korean Properties"). His interests in the Korean Properties were in his name and the claimant has no registered interest in these assets.
- [7] The Korean Properties are:
- (a) Paldal commercial building (respondent is 1/3rd owner);
 - (b) Anjung land (respondent is 1/3rd owner);
 - (c) Jangnan land (respondent is 1/3rd owner);
 - (d) Suwon business (respondent is sole owner);
 - (e) Ilsan apartment (respondent is sole owner);
 - (f) Dongtan/Bansong commercial properties (respondent is sole owner); and
 - (g) Jungnam property (respondent is sole owner).
- [8] In addition, the respondent has an entitlement to a Korean pension (the "Korean Pension") and a term deposit ("Korean Term Deposit"). The respondent has paid key money in respect of the apartment where he lives with his sister and brother-in-law when in Korea, which will be due back to him if they ever leave that apartment; he also received key money in respect of the apartment known as the Ilsan apartment. I will explain what key money is in due course.
- [9] The respondent says none of the Korean Properties, Korean Pension, Korean Term Deposit, or key money (together the "Korean Assets") are family assets. The claimant says they all are family assets.
- [10] In addition, the respondent is one-half owner of property in Korea known to the parties as the Dongoh-ri land. This is a property that includes a burial plot for the respondent's family members and the claimant does not assert any claim against it.
- [11] The parties agree on the valuation of most of the Korean Properties, but not on the value of the Suwon business.

- [12] The net value of the Korean Assets today is in the range of between 17.4 billion Korean Won ("₩") and ₩ 18.5 billion, which roughly works out to between 15.6 million Canadian dollars ("\$") and \$16.5 million. The major valuation difference between the parties has to do with the Suwon business which the claimant values approximately \$900,000 higher than the respondent says it is worth.
- [13] The claimant takes issue with the respondent's failure to disclose certain information about the Korean Assets and his income during the discovery phase of this case, and asks the court to draw adverse inferences against him as a result.
- [14] In addition to the respondent's assets in Korea, after the parties moved to Vancouver in 2000, they bought and sold various residential properties at the instigation and under the direction of the claimant. The claimant has a talent for design and was able to direct contractors to improve the properties and re-sell them at a profit.
- [15] The parties agree that the assets they hold in Vancouver are family assets. Currently they own a home with an address on Allison Road in Vancouver. This home was in the final stages of construction at the time of trial, and is now occupied by the claimant, based on interim orders of this court.
- [16] The parties disagree on what is to happen with the Allison Road home: the claimant seeks to have the whole of it transferred to her; the respondent says it should be sold and the proceeds divided equally. This question will turn on other findings regarding the Korean Assets, income, and the respondent's support obligations. The parties also disagree on the value of the home.
- [17] While the respondent admits that he should pay child support and spousal support, he and the claimant disagree as to the amounts, retroactively and going forward.
- [18] There is one access issue only, and that is that the respondent wants to be free to take the parties' 14 year old son to Korea with him for a visit, and the claimant opposes this.

Issues

- [19] I will approach the issues in the following order:
1. Which if any of the Korean Assets are family assets?
 2. What is the total value of the Korean Assets held by the respondent?
 3. What is the value of the Allison Road property?
 4. What is the value of the other Canadian family assets?
 5. How should the family assets be divided? This requires considering the facts of:
 - (a) debt;
 - (b) gifts and inheritances; and

- (c) advances and expenditures post-separation.
- 6. What is the respondent's income and should income be imputed to him?
- 7. What is the claimant's income, and should income be imputed to her?
- 8. What is an appropriate amount of child support, retroactive and ongoing, that should be paid by the respondent?
- 9. What is an appropriate amount of spousal support, retroactive and ongoing, that should be paid by the respondent?
- 10. Should the respondent be permitted to take the parties' son on a trip to Korea?
- 11. Other Issues.

Analysis

Findings on Credibility and Reliability

- [20] Before I delve into the specific issues, it is convenient to address my general impressions of the credibility and reliability of the two key witnesses, the parties. While there was some common ground in their evidence, there were also many disputes as well as different spheres of knowledge.
- [21] The claimant was a soft-spoken cautious witness. I found that she was careful in her evidence, controlled her emotions, and did not exaggerate. She readily admitted that she had to estimate or approximate many of her answers in terms of numbers or dates.
- [22] It was also telling that the claimant did not search to frame her answers in a way that would negatively reflect on her husband. Rather she chose her words carefully to have just the opposite effect. Indeed, in her evidence in direct, her lawyer would often have to ask several questions to draw out a point that he felt relevant to her claim and when stated directly might be construed as reflecting negatively on the respondent.
- [23] In some trials the disrespect felt by opposing parties for each other is palpable, and it is fair to say that such negative emotions can impede the reliability of a witness's evidence. I did not feel this about the claimant's testimony here. After observing her testify, I came to the conclusion that the claimant was attempting to be honest and objective in her evidence. Her memory seemed sound and she did not speculate or reconstruct evidence that she could not recall. I found her to be a credible and reliable witness.
- [24] Throughout the marriage, the respondent kept most of the detailed information about the Korean assets and his Korea income to himself, and did not share it with the claimant. Nevertheless, the claimant, through counsel, challenged many of the propositions advanced by the respondent at trial regarding his Korean assets and income.
- [25] I found that the respondent was less credible or reliable as a witness.

- [26] Importantly, the respondent was not forthright about his finances, the key issue at trial. The respondent regularly swore affidavits and financial statements that were false or careless or directly contradicted by his evidence at trial. Often the respondent's evidence dealing with details of his finances was internally inconsistent or inconsistent with the documents or logic, and was so strange as to be improbable.
- [27] I do not consider that the respondent's wandering and imprecise evidence was due solely to a deliberate attempt to deceive the claimant or the court. I find that the respondent truly did not have a close grip on his finances during the marriage, in large part because he had such a large asset base and he was not concerned about running out of money. But in the course of this proceeding he also actively resisted producing information that might assist the claimant, and I have concluded that to a considerable extent his evasiveness was deliberately deceitful.
- [28] There are so many examples of inconsistencies and implausibilities in the respondent's evidence that it would not be useful to list them all. I will just touch on a few subject matters where his evidence was not believable:
- (a) the Sook Account (defined shortly);
 - (b) post-separation rent and other financial transactions;
 - (c) the Ilsan apartment rental and key money; and
 - (d) the respondent's document production generally.

The Sook Account

- [29] Perhaps one of the most notable examples of the respondent's deception in the pre-trial process has to do with a Korean bank account that he did not disclose until the eve of this trial. This account was in the name of Yoo Jung Sook, who is the mother of the respondent's brother-in-law Joon Sung Kim, who is married to Myung Hi Hong, the respondent's youngest sister. For ease of reference, I will refer to it as the "Sook Account".
- [30] Joon Sung Kim is the manager of the respondent's cattle ranch business, the Suwon business. When the respondent is in Korea, he lives with Joon Sung Kim and Myung Hi Hong.
- [31] The Sook Account was used by the respondent to receive revenues and not report them to the income tax authorities. Revenues from the sales of some cattle, and from rental of properties, were received in this account. The respondent's failure to produce these records earlier was in direct defiance of court orders for production. He had been ordered to produce bank records and records for investment accounts in his name or held for him or used by him or on his behalf, from 2008. He had sworn affidavit evidence that he had produced all such records, yet that evidence was false because he had not produced the records from the Sook Account. If this case had gone to trial one year earlier as it was set to

do, the claimant and the court would never have known about the Sook Account.

- [32] The respondent also did not disclose the Sook Account to the accountant who prepared the tax returns for him and who calculated his income from the Suwon business; and did not disclose it in time for it to be taken into account by the claimant's expert in the valuation of the Suwon business.

The Respondent's Post-Separation Rent and Other Transactions

- [33] Also negatively affecting the respondent's credibility was his evidence regarding financial transactions post-separation, including payment of rent on an apartment.
- [34] The respondent claims that post separation, he paid rent of \$2,300 month for an apartment in Port Moody. The rent cheques do not go to any rental company, but to a person with a Korean name (Myungae Kim). The respondent testified that in the months from October 2011 through April 2012, he had a female friend write the cheques for him, on her account, Kyung Ja Moon. His explanation for this was initially that he was not familiar with writing cheques, an assertion that is not believable. He then claimed that he did not have money or time to write cheques, and so this woman who owned a restaurant he frequented stepped up and helped him out. He says that he paid her back when he received an advance of \$25,000 by way of interim court order in August. However, the advance he received was in August 2011, so he could have put that money in his own bank account or paid rent directly to the landlord using those funds. His evidence thus makes no sense at all.
- [35] Furthermore, during the time he claims to have been short of cash and unable to pay rent, he clearly was not as he was spending considerable sums of money gambling, as was belatedly disclosed.
- [36] Another strange transaction occurred when the respondent transferred \$136,047.62 from Korea to a friend's bank account in Vancouver on January 8, 2009. His explanation for this was that it was one Korean friend's money, who wanted it transferred to another Korean friend's account. The account holder was called as a witness for the respondent. His evidence did not line up with the respondent's, nor did either one's evidence line up with the bank statements, and the story did make any sense. The transfer is recorded as taking place on the very day before the parties separated.

The Ilsan Apartment

- [37] The dispute over the Ilsan apartment ("Ilsan Apartment") was an emotional issue for the parties. This was an apartment purchased in the respondent's name in 2000. After the purchase, it was where the claimant's mother and father lived, and then, when her father died, her brother also lived there. Post-separation there was litigation concerning that apartment in Korea, as the respondent successfully sought to evict the claimant's mother and brother, as well as claim back rent.

[38] The Ilsan Apartment is an asset at issue in this litigation, and the respondent was required to disclose whether or not he had subsequently rented the apartment. In an affidavit sworn May 28, 2012, he swore that the Ilsan Apartment had not yet been rented out and that it was incurring strata fees and property tax expenses.

[39] However, the Ilsan Apartment had in fact been rented out as at the May 28, 2012 affidavit. The respondent corrected his evidence in an affidavit sworn May 30, 2012, in which he stated:

Before departing [Korea] I left a blank lease agreement with my sister, which I had signed, to enable her to complete a lease if she found an interested party. I was advised by my sister by text message on May 28, 2012 and verily believe it to be true that there is now a lease, dated from February 7, 2012 when my sister first received a 10% deposit. The contract was completed and the "key money" was provided on or about March 23, 2012. I do not have details of the negotiations and I was not aware of the contract or the deposit before May 28, 2012.

[40] The above assertions are very strange, given that at the time the lease was entered into, the respondent was living with his sister and her husband in Korea. A document produced at trial showed the respondent's entry and exit dates from Korea, and that he was in Korea between the dates of January 27, 2012 and March 21, 2012. The respondent confirmed in his evidence that the lease agreement for the Ilsan Apartment was signed and stamped by the respondent on February 7, 2012, and a ₩ 15,000,000 deposit was received that date by his sister Myung Hi Hong as a down-payment. However, the respondent insists that he simply signed a blank lease agreement and did not know it had been entered into.

[41] Each of Myung Hi Hong, Joon Sung Kim, and the respondent testified that while the respondent signed the Ilsan Apartment lease agreement, it was Myung Hi Hong who completed the transaction and she did not tell him that it had completed even though they were living in the same residence in Korea and he had just signed the lease document. I simply do not believe this. There is no credible explanation for such unusual behaviour. I found each of these witnesses' evidence regarding this transaction to be evasive and internally inconsistent, and vague and incredible on some of the details, including what was done with the key money when it was received.

[42] Myung Hi Hong's evidence suggests that she did not get the lease agreement signed by the respondent until the realtor actually found a tenant and the details of the lease were filled in on the lease agreement. She says she brought the lease home and left a note on it for the respondent to sign it, and the next morning she saw that it was signed by him and took it back to the realtors. Then the tenant immediately signed the lease agreement and so it was a completed deal. The respondent was still living with Myung Hi Hong after the lease agreement was finalized and did not leave Korea for more than another month.

[43] Myung Hi Hong's evidence suggests that the lease agreement presented to the respondent to sign was not blank at all but was filled in except for the signatures. Even if she and the respondent did not talk about it (which I do not believe), the respondent's evidence is

inconsistent with that of his sister. On his sister's evidence, it would have been obvious to the respondent that a tenant had been found because the lease agreement was filled in except for the signatures and his sister certainly never told him that the proposed deal fell through after he signed it. His sister's evidence is contrary to the impression the respondent tried to create in his affidavit evidence to the effect that he signed a blank lease and left it with his sister just before he departed Korea, in case she found an interested party.

- [44] I also observed that Myung Hi Hong repeatedly went out of her way in her evidence to refer to the Ilsan Apartment as full of garbage requiring extensive efforts to clean-up after the claimant's mother and brother moved out. This evidence was not responsive to any questions she was being asked, and I interpreted it as her way to insult the claimant by suggesting that the claimant's family was dirty.
- [45] Mr. Joon Sung Kim's evidence was not credible in relation not only to the Ilsan Apartment, but in relation to the Sook Account.
- [46] Joon Sung Kim claimed to have nothing to do with setting up the Sook Account, that it was set up by someone else working for the Suwon business and that he was surprised to learn of it in 2006, which he initially said was soon after he became an employee of the business. But records put to him in cross-examination showed he worked for the business as early as 2003. The account was in his mother's name, and to use a bank account in Korea, one needs the bank account holder's private stamp and passbook. He claimed that he never told his mother about it despite the fact that he knew it was being used to assist the respondent in illegally evading income taxes. He never explained how another employee could have obtained his mother's stamp and passbook in order to set up the account, something which on its face is improbable.
- [47] I have concluded that the evidence of Myung Hi Hong and Joon Sung Kim must have been concocted in an attempt to support the respondent's financial interests in this case and without regard to their oath to tell the truth.
- [48] The result was that I have concluded that statements by the respondent that serve his own financial interests in this proceeding, or those of his sister and brother-in-law to the same end, are not reliable or credible, and have to be viewed with extreme skepticism unless supported by independent documentation. Unfortunately, the documentation was a problem as well.

The Respondent's Document Production

- [49] The respondent played a cat-and-mouse game which required counsel for the claimant to go to considerable lengths before trial to find documents relating to the respondent's Korean Assets and income. Numerous interim orders for production of documents by the respondent were made with which he did not comply.

- [50] The respondent did not disclose significant and important relevant documents during the pre-trial discovery stage; and then disclosed new, highly relevant but still incomplete documents at the start of trial. The partial information about the Sook Account which was not produced until the start of trial is only one example.
- [51] Not only did he not produce documents during the discovery stage, he did not disclose assets or income on his financial statements filed as a requirement of these proceedings. These financial statements were very important in pre-trial applications concerning interim support.
- [52] The respondent did not disclose on any of his financial statements sworn August 5, 2009, October 5, 2010, May 27, 2011, or even May 10, 2012, which was less than a month before trial, the following: the Sook Account; the Korean Term Deposit; his Korean Pension; key money he had loaned his sister; and income he received on the rental of properties in Korea.
- [53] As another example, rather than produce the original credit card statements for the credit cards he used post-separation, the respondent produced unofficial typed summaries of those statements. The first time he produced a summary, pre-trial, in August 2011, he left out many transactions. The omitted transactions were records of significant spending at casinos in the months of March through August 2011 on gambling. He also omitted information about an expensive golfing trip he took in June and July 2011, on which he spent approximately \$7,000. The gambling continued through 2011 into 2012, with the respondent spending probably close to at least \$200,000 on gambling.
- [54] The omission of this information was at a material time in the litigation: it coincided with interim applications in this proceeding in which the respondent sought interim advances from funds held in trust. On August 3, 2011, at the respondent's request based on his purported need, Mr. Justice Leask ordered that \$25,000 be paid to the respondent from funds held in trust from the proceeds of sale of one of the Canadian properties. On October 25, 2011, Leask J. ordered another \$75,000 advance to the respondent. These orders were made at a time when the claimant and court had not been informed of the respondent's profligate spending on gambling and vacations.
- [55] The respondent was caught in this deception when a second summary of his credit card statements was produced at trial which now revealed some of the missing information.
- [56] Even still, by the time of trial the respondent had not produced all relevant credit card statements, nor had he produced sufficient information to be able to determine his sources of cash for this spending.
- [57] A key bank account used by the respondent was also used by the Suwon business. The account was held with the NH bank in Korea and had a number ending in 111. Prior to the first day of trial, the respondent did not produce statements for this account past September 2011.

- [58] Another technique seemingly employed by the respondent was to produce partially illegible documents. For example, to support his belated admissions regarding the receipt of the Ilsan Apartment key money, the respondent produced photocopies of documents purporting to be bank records relating to the key money. These were photocopied in a way where the documents were folded or partially covered up so that relevant information was hidden. This kind of obscure document production creates the exact opposite kind of inference hoped for: rather than infer that the missing information in the documents supports the story of the party producing them, the natural inference is that the documents would hurt that party's case if fully disclosed.
- [59] I find that in a case like this where there was so much effort on the claimant's behalf to obtain information from the respondent before trial, that such late and partial disclosure by the respondent was a transparent attempt to avoid pre-trial discovery and testing of the information in the documents. This reflects very poorly on the respondent's credibility. This is especially so here where the respondent had to know that producing documents in the Korean language at the last minute would put the claimant's counsel at a disadvantage and would require considerable time and assistance to review and understand.
- [60] The respondent argued that this is simply a matter that goes to costs. I disagree. An award of costs can perhaps be a partial remedy for the tactical disadvantage and disruption that such late production of relevant documents creates. But an award of costs will not undo the damage to the respondent's credibility caused by such behaviour.

General Legal Principles on Property Division

- [61] It is useful to set out some general legal principles on property division before delving into the specific property issues.
- [62] The FRA governs the division of matrimonial property in British Columbia. It presumptively gives each married spouse an equal interest in the family assets in existence as at a triggering event, which in this case is March 24, 2009. This presumptive equal division is subject to reapportionment on the grounds of fairness.
- [63] The FRA defines family assets in s. 58(2) as property owned by one or both spouses and "ordinarily used by a spouse or a minor child of either spouse for a family purpose". Section 58(3) provides that:

... the definition of family asset includes the following:

- (b) if property would be a family asset if owned by a spouse, property
 - (i) over which the spouse has, either alone or with another person, a power of appointment exercisable in favour of himself or herself, or
 - (ii) disposed of by the spouse but over which the spouse has, either alone or with another person a power to revoke the disposition or a power to use or dispose of the property;

- (c) money of a spouse in an account with a savings institution if that account is ordinarily used for a family purpose;
- (d) a right of a spouse under an annuity or a pension, home ownership or retirement savings plan;
- (e) a right, share or an interest of a spouse in a venture to which money or money's worth was, directly or indirectly, contributed by or on behalf of the other spouse.

[64] The FRA provides in s. 59 that certain business assets are excluded from the definition of family assets as follows:

59(1) If property is owned by one spouse to the exclusion of the other and is used primarily for business purposes and if the spouse who does not own the property made no direct or indirect contribution to the acquisition of the property by the other spouse or to the operation of the business, the property is not a family asset.

- (2) In section 58(3)(e) or subsection (1) of this section, an indirect contribution includes savings through effective management of household or child rearing responsibilities by the spouse who holds no interest in the property.

[65] Section 59(2) identifies that considering whether an indirect contribution has been made to a venture, or to property that is used for business purposes, the court may consider as an indirect contribution savings made through effective management of household or child rearing responsibilities.

[66] Both parties agreed by the end of trial that the Court was to assume that the law of Korea was the same as the law of British Columbia: *Hanuse v Hanuse*, [1984] B.C.J. No. 2977. Thus I must determine whether or not the Korean assets are family assets pursuant to the FRA.

[67] Section 60 of the FRA makes it clear that the onus of disproving that an asset is a family asset is on the party opposing such a claim.

[68] Where family assets remain in existence at trial, the value of those assets may be considered as of the trial date if it is not unfair to do so: *Blackett v. Blackett* (1989), 40 B.C.L.R. (2d) 99 (C.A.).

[69] Since this court does not have jurisdiction to make orders in respect of foreign land, if I determine that some of the Korean Assets are family assets, I may make compensation orders to account for them: *Tezcan v. Tezcan* (1992), 62 B.C.L.R. (2d) 344 (C.A.) [Tezcan]; *Laurence v. Laurence* (1991), 56 B.C.L.R. (2d) 254 (C.A.) [Laurence].

[70] Furthermore, even if I determine that some or all of the Korean Assets are not family assets, the liquidity of those assets and the value of those assets may be relevant in respect of the apportionment of family assets, or the respondent's support obligations.

1. Which if any of the Korean assets are family assets?

Overview of Korean Properties

- [71] Years prior to the marriage, the respondent's father gave him a one-third interest in three Korean properties, which will be described as the Paldal Property, Anjung Property, and Jangan Property. He also received interests in another property, described as the Hwaseodong Property, as well as a property known as the Saeryudong Property.
- [72] After their 1988 marriage, the respondent's father gave him a 15% interest in another property, the Gildong Property, in 1990. His father also gave him an interest in a property known as the Maesanro Property.
- [73] After marrying in 1988, the parties lived in Korea for 12 years before moving to Canada in 2000. That year the respondent purchased the Ilsan Apartment in Korea.
- [74] In August 2006, the respondent's father died and the respondent inherited a cattle ranch business, the Suwon business, as well as some properties at Ahnsung and Jungnam.
- [75] In 2006, the respondent entered into contracts to purchase properties in an area known as Dongtan or Bansong and these purchases completed by 2008.

The Parties' Intentions

- [76] The respondent says none of the Korean Properties are family assets. The claimant says they all are family assets.
- [77] The claimant says that all of the Korean Properties were capital investments intended by both of them to support the family on an ongoing basis and into the future, and this means that they were ordinarily used for a family purpose and as such, they meet the test for family assets.
- [78] The respondent in his evidence admitted that he had sold properties in Korea to support him and the claimant in Canada, and that he told the claimant that the retirement plan for them for the future was that they would sell the remaining Korean Properties to live off the proceeds.
- [79] However, the respondent's counsel in argument attempted to draw a distinction between the parties' intentions with respect to Korean properties owned by the respondent that he had sold prior to separation to finance the family, and assets remaining in his name as at separation and the triggering event. As will be clear in my analysis to follow, I find that the evidence does not support such a distinction.

Use of Korean Assets to Fund Lifestyle and Assets in Canada

- [80] After they moved to Canada in the summer of 2000, the couple bought and sold several residential properties in Vancouver. These properties were purchased and renovated under the claimant's supervision and direction. Each time the parties grew their net asset base.

- [81] For example, in 2001, the parties bought a property on West 31st Avenue, Vancouver for \$780,000. They sold it, after renovations, in June 2007 for \$2.375 million. In November 2003, they purchased a property on Broughton Street for \$2.09 million and a property on Nicola Street for \$797,000. In December 2005, the Nicola Street property was sold for \$1.499 million. The Broughton Street property was sold after separation, for \$4.2 million. In 2006, they purchased a property on Cordova Street for \$3.379 million (through a pre-sale contract in 2005). This property was sold after separation, just before trial, for \$5.9 million. These figures regarding purchase and sale are gross figures and do not identify the funds spent on renovations and financing.
- [82] Often the respondent would transfer money from Korea to Canada to be used towards the purchase of property in Canada that had been identified by the claimant. He would obtain funds by liquidating some of the capital of his Korean assets. For example, over time, he sold interests in five Korean properties that had been gifted to him by his father: Hwaseodong, Ahnsung, Gildong, Saeryudong, and Maesanro. All or part of the proceeds of sale was used for family purposes in Vancouver, either to support the family or to assist in the purchase of Canadian property.
- [83] The respondent argues that other Korean Properties still held by him are not family assets in that they were not intended to be used by the respondent and claimant for their future financial security. This argument seems to be in part because of the connection these properties had with his siblings or mother. But on close examination, I find this submission is without merit as it is inconsistent with the fact that the respondent disposed of other Korean assets with similar family connections, and used the capital to support the respondent, the claimant, and their children.
- [84] There are several examples of the respondent selling Korean assets which he owned with other siblings or which had a close family connection.
- [85] The Hwaseodong property was a commercial building gifted by the respondent's father to him in 1981 prior to marriage. The respondent's older sister lived in it and received the rent. Despite that family connection, the respondent sold the property in 2000 when the respondent and claimant moved to Canada.
- [86] In 1995, the respondent's father gifted to him part of the farming business, approximately 100 head of cattle. These were part of the farm located at Ahnsung. In 2000, the respondent sold this part of the farm back to his father, and sent most of the proceeds to Canada for the support of the respondent and claimant, and for their property investments in Canada.
- [87] Maesanro is where the respondent's parents had their home and is where the respondent and his siblings were raised. The respondent was gifted four lots of the Maesanro property in 1990 after marriage. Other siblings were likewise gifted lots. The respondent described it and Saeryudong as being similar in that family members shared ownership of neighbouring lots.

- [88] The respondent's interest in Saeryudong was acquired before marriage.
- [89] Despite the family connection and the fact that his lots were in a group with others owned by family members, the respondent sold his interest in Saeryudong in 2002 and in Maesanro in March 2003.
- [90] The Gildong property was a commercial rental building purchased by the respondent's father in 1990 (post-marriage). The respondent received a 15% interest in the property, his brother received a 35% interest, and the father retained a 50% interest.
- [91] The respondent's evidence was that the respondent and his brother had an arrangement whereby the respondent would manage and collect the rents from the Gildong property. In return, they had a reverse arrangement regarding another property, the Paldal Property, that their father had gifted them. The respondent received a one-third interest in the Paldal Property in 1985 before marriage and his brother likewise received an interest in that property.
- [92] When the respondent wished to have capital to use in Canada, the Gildong property was sold in July 2001, around the same time the parties were buying their home on West 31st Avenue in Vancouver.
- [93] As noted, the couple agree that the assets in Canada are family assets.
- [94] Both parties agree that over the years the respondent transferred approximately \$5 million to Canada from Korea. There is no doubt that this was through liquidation of the just-described capital assets, and very little of it was comprised of earnings by the respondent. These Korean assets were sold to be able to send money to Canada to assist in funding the respondent and claimant's lifestyle and the claimant's purchase of properties for the couple in Vancouver.
- [95] This is consistent with the claimant's evidence that it was always their plan to live in Canada off of the Korean assets that the respondent had been gifted or inherited from his father. This conduct evidences a family purpose.
- [96] However, the respondent argues now that Korean Properties still in his name as at the marriage breakdown were never intended to be used to meet his and the claimant's needs, and somehow can be distinguished from the obvious use to which he put the Korean properties that he sold. I do not accept his argument in this regard and do not find it supported by the evidence. On the evidence, in terms of the parties' intentions and conduct, there was no meaningful distinction between the Korean Properties still in the respondent's name as at the marriage breakdown and those Korean properties which he sold prior to the marriage breakdown which were used for a family purpose.
- [97] I will now address the Korean Properties still in the respondent's name at the time of the marriage breakdown and triggering event.

Paldal Property

- [98] In 1985, the respondent was gifted a one-third interest in a commercial building referred to in this litigation as the Paldal Property. This was prior to the parties' marriage in 1988. The other owners of the Paldal Property are the respondent's brother who has a one-third interest, with the final one-third being owned by the respondent's sisters.
- [99] The respondent continued to hold his interest in the Paldal Property as at the triggering event, and still holds it.
- [100] The respondent's brother manages the Paldal Property. There are rents paid by tenants. The respondent claims that he reported a portion of the rental income from the building on his own tax returns but did not receive any of the income. I did not believe this evidence as it is contrary to common sense and his behaviour in relation to his taxes. He has a practice of minimizing his reporting of income to Korean tax authorities, not overstating it, of which there were several examples at trial. Whether this means he did not report the income and did not pay taxes on it, or that he actually received the income and did pay taxes on it, I do not know.
- [101] The respondent argues that the fact he did not sell his interest in the Paldal Property to support the family in Canada and to finance the purchase of Canadian properties, when contrasted to the fact he sold other properties in Korea for this purpose, is evidence that there was never a common intention to use the Paldal Property for a family purpose.
- [102] Furthermore, the respondent says that he could not sell his interest in any event because he was only a part owner.
- [103] I do not accept the respondent's attempted distinction in argument between the Paldal Property and other property owned by him in Korea which was intended to be used for the family purpose of future financial security. It is notable, firstly, that despite having the burden of proof to establish that the asset is not a family asset, the respondent did not actually testify that he never had any intention to use the Paldal Property for the family's future financial security, or that the intended future use of this asset was somehow different than the intended future use of the other Korean Properties.
- [104] Furthermore, the respondent's position advanced in argument that he would be precluded from selling a part interest in property is inconsistent with the evidence regarding the Gildong property. There is nothing in the evidence to indicate that being a minority owner of the Gildong property restricted the respondent's ability to capitalize on that asset for the purposes of benefiting the claimant and children here in Canada.

[105] Thus, I do not accept the respondent's position that he is unable to capitalize on the Paldal Property when he wishes to do so, or that he never intended to do so. Clearly the pattern of the respondent has been to hold Korean property for the family's financial security and then sell it when he feels the need. The Paldal Property is no different than other Korean properties owned or partially owned by the respondent. The parties intended that it would be used for their future financial security.

Jangan and Anjung Properties

[106] The respondent also owns two agricultural properties described at trial as Jangan and Anjung Properties. These are both bare land which he sometimes rents to ginseng farmers. These properties were gifted to him from his father before marriage in approximately 1985 and 1986.

[107] In approximately May 2010, the Korean government expropriated a portion of the Anjung Property. The payment for the expropriation was subject to an interim order in this proceeding, made by Loo J. on April 29, 2011. The claimant received \$44,889 and the respondent received \$377,386.59.

[108] I find that there is nothing to distinguish the Jangan and Anjung Properties from the rest of the Korean properties owned by the respondent, which were all an intended source of the respondent and claimant's future financial security.

Suwon business

[109] The respondent's father owned a cattle ranch business in Korea, at Suwon, where both the cattle inventory (which were raised for beef) and the land on which the cattle were kept.

[110] The respondent was at various times employee and part owner of the Suwon business before ultimately inheriting it in 2006. Although he is now the sole owner of the Suwon business, he has a full-time manager and does not appear to devote much time personally to the affairs of the business.

[111] The respondent worked in the Suwon business in 1985, 1986, and 1993. From 1999 to August 2006, the respondent worked as manager of the business during his father's declining years.

[112] The claimant had little direct involvement in the Suwon business. Twice per year on special holidays when the couple lived in Korea the claimant would participate in preparing food and drinks for the workers, but that was about it.

[113] The respondent's employment interests started elsewhere. He has a university degree in economics and business. He began his employment working as a computer sales person, and even started and ran his own business in this field for a while (called KAST). He took a year off of employment to go to Japan and study the Japanese language.

- [114] The evidence reveals that once his father passed away, the respondent took a very removed interest in the Suwon business, leaving the day-to-day management to his brother-in-law. The respondent spends months away from the business living in Canada, during which time his greatest interest is golf. On cross-examination, the respondent purported to know very little about the details of the business and its accounting.
- [115] When the family first moved to Canada, the respondent continued to travel back to Korea to spend time with his father and then had perhaps a more active role in the Suwon business. I find that his efforts towards the Suwon business, while his father was alive, were in order to secure his inheritance. It was known within the respondent's family that the father wished to leave the Suwon business to a son. The respondent had only one other brother who was alive and he had made it clear that he was not interested in the business. Thus, the father's plan was that the respondent would be the one to inherit the business.
- [116] Furthermore, that the respondent was chosen by his father to inherit the Suwon business had to be due, in no small part, to the fact that the respondent had spent at least some time working at the business, time which he would not have been able to spend had the claimant not looked after the family's interests in Canada without him.
- [117] I also find that the income earned by the respondent from the Suwon business was used for family purposes to support the parties and their children.
- [118] When the respondent and claimant decided to move to Canada, they both knew that the respondent would likely be unable to work in Canada due to his lack of English language skills. Likewise, the claimant would be unable to work for the same reason, as well as for the fact that she was primarily responsible for the two children. It was their mutual intention to use the assets in the respondent's name in Korea to fund their lifestyle in Canada by selling the properties when capital was needed.
- [119] The Suwon business was part of this plan from the beginning.
- [120] For example, I have already referred to the fact that the respondent was gifted some cattle from his father in relation to the farm business at Ahnsung and owned them from 1995 to 2000. He then sold them back to his father to raise capital for his and the claimant's move to Canada with their children. This was discussed with the claimant, and the respondent explained that there were advantages to this transaction given that he was going to inherit the whole business in any event.
- [121] I find that this method of raising capital was always what the parties ultimately expected to do once the respondent inherited the full business.
- [122] This plan never changed once the respondent inherited the Suwon business. He has continuously taken more capital out of the business, year after year. Indeed, in the same year as he inherited it he appears to have taken ₩ 2 billion out of the business between August 2006 and December 2006 (I will come back to this topic).

- [123] The Suwon business was and is, and in the truest sense of the phrase, a cash cow to the respondent. The respondent has used it and continues to use it as a source of money, drawing out cash whenever he wants, regardless of whether it reduces capital or takes away revenue. The business accountants decided how to characterize whatever he withdrew. He used the withdrawn cash to fund his and the respondent's lifestyle and acquisition of assets in Canada, regardless of whether the cash was ultimately identified as income or capital for tax purposes.
- [124] The Suwon business is not incorporated, and the respondent does not separate his finances into separate accounts, so there is no easy way to determine what he spends on personal expenses and what is a business expense.
- [125] The respondent called as a witness at trial the accountant who prepares his Korean income tax returns, Ms. Suk Mi Noh. She also prepares a profit and loss statement for the business.
- [126] Ms. Noh explained that she looks at all withdrawals of cash made by the respondent from the bank records, which can be supported by records of the Suwon business as related to the business, and she treats those as business expenses. Those withdrawals that cannot be supported by records, she treats as withdrawal of his capital from the business.
- [127] Ms. Noh, however, did not know that over the years the respondent did not disclose to her the Sook Account that receives proceeds of cattle sales and property rentals. This non-disclosure significantly undermined the value of her evidence. However, it did not undermine her evidence that the respondent has withdrawn capital from the Suwon business over the years.
- [128] The respondent made much in his evidence of his duty to keep the Suwon business going while his mother is alive. I did not understand this evidence at all. His mother did not inherit the business. His mother does not work at the business. His mother is also not supported by the business. The original land on which the business was operated was sold after the inheritance. There is no basis for assuming there is some kind of family pride wrapped up in the business. According to the respondent's evidence and submissions, the real value of the business lies in the number of cattle at any one time. But the cattle are bought and sold, and there is not one long-time herd with which the mother might have some sentimental affection.
- [129] I therefore do not accept the bald assertion that the respondent has a duty to keep the Suwon business operating while his mother is alive. Perhaps he has some prideful need to keep up a facade for his mother that he is growing assets accumulated by his father, rather than just diminishing them, but his conduct is not consistent with acting towards this end.
- [130] Since he inherited the Suwon business, the respondent has sold cattle and not purchased new calves to replace the stock. While some of this may be explained by a declining market in Korean beef, it also is consistent with the respondent's overall plan from the beginning to use the business as a source of funds to support the parties' lifestyle.

Ilsan Apartment

- [131] In 2000, just before the parties moved to Canada, the respondent purchased the Ilsan Apartment. The apartment is approximately 1,000 square feet or less.
- [132] According to the claimant, she suggested that they buy the Ilsan Apartment so that they would have a property in Korea where they could, if they wished, come back to when they got older. She suggested that her parents could live at the property, and since they would not live forever, she and the respondent could then have it for their own use in their own senior years. The respondent agreed and that is how the property ended up being purchased, but in the respondent's name alone as was the custom.
- [133] The claimant testified that her father contributed money towards the Ilsan Apartment, and pointed to bank records from the respondent's account which were consistent with her evidence. She also gave evidence explaining her pooling together of other funds towards the purchase.
- [134] In his direct evidence, the respondent said that the money for the purchase of the Ilsan Apartment came from his father, who gave it to the respondent's brother-in-law, who transferred the money into the respondent's account. But in cross-examination, the respondent would not agree that he did not deposit the money into his account for the purchase of the Ilsan Apartment, i.e. he seemed to want to leave open the possibility that he made the bank transfers.
- [135] The respondent argued that the claimant's evidence suggesting that her father contributed to the purchase price was inadmissible due to issue estoppel.
- [136] The respondent points to a document introduced into evidence as a translated copy of the judgment of a Korean court (the "Korean Judgment"). The respondent submits that the Korean Judgment made a finding of fact that the claimant's parents did not contribute money towards the Ilsan Apartment purchase. Having read the document identified as the Korean Judgment, I find this argument to be quite a stretch. The meaning of the Korean Judgment is also not self-evident. It was not explained by any expert in Korean law.
- [137] I do not see that issue estoppel is applicable here where there was a complete lack of evidence before me as to what the Korean legal issues were, what legal presumptions might apply given that the title to the property was registered in the respondent's name, what was the legal process and evidence before the Korean tribunal, what were the findings of fact of the Korean tribunal as opposed to findings of law or what we would call obiter, and what was the legal effect of the Korean Judgment.
- [138] The Korean Judgment indicates that the claimant was not a party to the proceeding, which was brought by the respondent against the claimant's mother and brother, seeking that the Ilsan Apartment be transferred to him and that he be paid rent from October 9, 2009 following the initiation of the claimant's divorce proceedings in Canada.

- [139] The Korean Judgment suggests that the proceeding was "submitted" on December 7, 2010 and decided December 21, 2010, which suggests no discovery process. The claimant says that evidence of the bank account transactions that support her version of events was only produced by the respondent on the eve of the trial in the present proceeding, and was not available in the Korean proceeding.
- [140] In any event, it is undisputed that the Korean court did not deal with the question of whether or not the Ilsan Apartment was a "family asset" within the meaning of the FRA.
- [141] The respondent argues that the claimant's evidence was not credible because the purchase funds for the Ilsan Apartment were sent to the purchaser before the bank account transaction that the claimant says evidences her father's contribution. Even if that is so, I do not see that this negatively impacts her credibility because the father's contribution was coming to the respondent, not to the purchaser. The respondent may well have had enough funds to pay the purchaser and collect a share from the claimant's father subsequently.
- [142] I did find that both the claimant and the respondent's evidence as to the exact source of funds used for the Ilsan Apartment purchase was confusing. Nevertheless, I preferred the claimant's evidence over that of the respondent's. Her evidence was also more consistent with the parties' conduct in allowing her parents to live at the property.
- [143] It is not necessary to find that the claimant's father contributed money towards the purchase price. This is because regardless of whether or not the claimant's father contributed money towards the purchase price, I find that the property was purchased and intended for a family purpose.
- [144] I accept the claimant's evidence as to the intentions when the property was purchased: it was a property purchased for her and the respondent's future use, and in the meantime, they would allow the claimant's parents to live there. Also, even the respondent, in his evidence in direct, said that the purpose of the purchase was so that he and the claimant would have a place to stay when they returned to visit Korea.
- [145] After purchase of the Ilsan Apartment, the claimant's parents lived in it. Eventually the claimant's father passed away, and her brother lived in the apartment with the claimant's mother.
- [146] It is only when the claimant and respondent separated, and the claimant started this matrimonial proceeding against the respondent, that the respondent evicted the claimant's mother and brother and sued them in Korea for rent. The evidence was that a Korean court found that the respondent was entitled to take these steps, but the evidence does not establish that the Korean Judgment made the binding findings of fact as against the claimant now argued by the respondent.
- [147] I find that the Ilsan Apartment was intended to be enjoyed by the claimant and respondent in the future, and this is a family purpose.

Dongtan/Bansong Properties

- [148] In the 2006-2008 period, the respondent purchased properties located in an area known as Dongtan or Bansong, referred to at trial as the Dongtan/Bansong Properties. These were pre-sale contracts for two lots, paid in instalments, with the first payments in 2006 and the last in 2008.
- [149] The respondent entered into a contract to purchase these properties in September 2006, soon after he inherited the Suwon business. At one point in his direct evidence he said he used money from his inheritance towards the purchase; at another point in his direct evidence he said he used the proceeds of sale of the Jungnam properties that he had inherited. He also later borrowed some money on a bank loan from NH bank towards the purchase.
- [150] These properties are two bare commercial lots. The respondent purchased the properties to use in conjunction with the Suwon business. The respondent thought that he would put a Korean barbeque restaurant and a butcher store there, which would use the beef products from the Suwon business, thereby increasing the business income. However, the respondent has not in fact used the properties at all and they are simply held as part of his overall asset portfolio in Korea.
- [151] There is nothing to distinguish the Dongtan/Bansong Properties from the portfolio of assets in Korea in the respondent's name that the respondent and claimant always intended would be used to support them in the future. The respondent has not met the onus of proving that these assets are not family assets.

Jungnam Property

- [152] The respondent inherited some farmland parcels with the Suwon business from his father known as the Jungnam properties. Most of the Jungnam properties were sold by him in the period of 2008 to 2010. Some of the proceeds were used to pay inheritance taxes and debts. But also, the respondent sent part of the proceeds of the sale to Canada, so it could be used for family purposes in Canada.
- [153] This was consistent with the respondent's general practice of treating all of his Korean assets as disposable to support the family in Canada, even though they were part of his inheritance.
- [154] In his direct evidence, the respondent indicated that he had retained one small parcel of the Jungnam properties, which was so small as to be of no value (the "Jungnam Property").
- [155] The respondent did not disclose his ownership of the Jungnam Property on any of his several financial statements sworn and filed in this proceeding. He suggested in cross-examination that the property was of zero value but he did not explain the basis for that conclusion. When it was pointed out to the respondent that he had never had the property appraised, his answer was to blame the claimant for not appraising the property in the

context of this proceeding (a strange proposition when he had not disclosed that he still retained one of the Jungnam properties).

- [156] Following the trial I asked for further submissions from the parties on this asset. There appears to be agreement that on the available evidence and extrapolating from other sales of larger parcels, at most the value of the Jungnam Property is under \$2,300. Given the frailties of the evidence and the fact that this is a nominal value in the context of this case, I conclude that it ought not to be taken into account further.

Dongoh-ri Land

- [157] The respondent owns a portion of land described as Dongoh-ri. This apparently is forested land, a portion of which is a burial site for his relatives. The claimant is not advancing a claim for this land. It is clear that this property is an exception to the other Korean Properties, and it was not intended to be sold in the future for the couple's financial security. It is not a family asset. Its value is not disputed as ₩ 536,192,500.

Korean Pension

- [158] The respondent has a Korean Pension. He has not disclosed the value of it. Ordinarily Part 6 of the FRA would apply to divide the pension between the parties. The claimant says that this is impossible due to the fact the pension is based in Korea. The respondent did not take issue with this point, or with the claimant's position that the pension should be taken into account as though it was a family asset.

Korean Term Deposit

- [159] The respondent holds in his name a ₩ 20 million term deposit with NH bank in Korea. The Korean Term Deposit was purchased April 22, 2009, and was due April 22, 2012. In his direct evidence the respondent thought that he purchased it with part of the money from the sale of the Jungnam properties (the farmland properties inherited with the Suwon business).
- [160] Despite the fact that the Korean Term Deposit had recently matured, the respondent was unable to say what its value was as of the trial date.
- [161] The respondent failed to disclose the existence of the Korean Term Deposit until his fourteenth affidavit and final financial statement in this proceeding sworn on June 4, 2012.
- [162] It is also interesting to note that he purchased this Korean Term Deposit soon after the couple separated and he learned that the claimant had started this proceeding. This was a time that he claimed he was suffering financial hardship.
- [163] The respondent has not persuaded me that there is anything to distinguish the source of funds for this Korean Term Deposit from the portfolio of Korean assets which the respondent always intended to and did from time to time draw upon to support the claimant and children, and to fund the parties' investments in Canada. Given my finding

that the other assets in the respondent's portfolio, the Korean Properties, are family assets, I conclude that he must have purchased this term deposit using family assets. Since it was purchased after the triggering event, it does not qualify as a family asset. However, the fact that it was purchased with family assets may entitle the claimant to a compensation order under s. 66(2)(c) of the FRA: *Foster v. Foster*, 2007 BCCA 83 at paras. 33-38.

- [164] The respondent may have other assets as well. He holds several Korean bank accounts. I have referred to the account with NH Bank ending in the numbers 111, used primarily for the Suwon business. To the extent the cash in it was valued as part of the Suwon business valuation, it should not be double-counted. The amounts in the respondent's other Korean bank accounts as at the triggering event are unknown.

Key Money

- [165] The Korean concept of key money was explained during the trial, although not in full detail. Key money is money paid by a tenant to a landlord at the time a lease is entered into. The landlord has the use of the key money during the time the tenant is renting the property. When the tenant leaves the apartment, a sum in the same amount as the original key money is to be paid back to the tenant by the landlord.
- [166] There are two amounts of key money discussed in the evidence.
- [167] First, the respondent paid the key money for the apartment rented by his sister, Myung Hi Hong, and her husband, Joon Sung Kim. When the respondent visits Korea, he lives in this apartment.
- [168] The key money related to the apartment where the respondent lives in Korea is ₩ 90,000,000. Since ultimately this is to be returned by the landlord to the respondent, it is an asset which has to be considered, much like an account receivable that will be paid sometime in the future. It was not disclosed by the respondent on any of his financial statements in this matter until his financial statement of June 4, 2012 produced at the start of trial.
- [169] There was not sufficient evidence to determine the source of these funds to decide whether or not they came from family assets. But since the onus is on the respondent to disprove that the asset is a family asset, and he has not led any contrary evidence, I conclude that the source of funds was the same as the rest of the family assets: the sale of Korean properties or revenues from Korean properties or the Suwon business, the proceeds of which were always intended by the respondent to support himself and the claimant.
- [170] There was not sufficient evidence as to when the key money was paid and became due. Since this evidence was in the control of the respondent, I conclude that the key money was paid before the triggering event. As such, I find that the key money is a family asset as well. I see no basis in the evidence to treat the ₩ 90,000,000 key money any differently than other Korean assets held by the respondent as at the triggering event. All of his assets were

intended for his and his family's financial security as a resource from which he would draw to support his family when needed.

- [171] In addition, the respondent was paid key money in the amount of ₩ 150,000,000 when the Ilsan Apartment was rented. This is for a two year lease ending in March 2014, and was after the triggering event. The claimant's submission at the close of trial was that she was making no claim against this as it is money that the respondent will have to someday repay when the tenants of the Ilsan Apartment leave.

Summary of Findings Regarding the Korean Assets

- [172] The parties spent considerable time at trial and filed many documents regarding the Korean Assets. I do not find it necessary to review the history of these assets in forensic detail. This is because, in summary, I have found that the evidence supports the claimant's submission as to the parties' intentions regarding these assets.
- [173] The respondent earned income from some but not all of the Korean Properties, and this was used by the family for family purposes. However, the use of income for a family purpose does not automatically lead to the conclusion that the underlying asset is a family asset: *Stuart v. Stuart* (1996), 21 B.C.L.R. (3d) 65 (C.A.) at paras. 59-61. The key to determining whether or not the underlying capital asset is a family asset is determining the parties' intentions.
- [174] The facts of this case are somewhat analogous to the facts in *Starko v. Starko*, [1986] B.C.J. No. 2341 (S.C.) [Starko]. In *Starko*, the husband owned a dry cleaning business, and after retirement, continued to own shares in the two inter-related controlling corporations. The business was operated by his children from a former marriage. He married the wife who was a party to the matrimonial litigation after he retired from that business. The court noted that he paid "scant if little attention to the business" of the two companies. The companies essentially funded whatever was needed by the husband and his new wife to live on, whether in the way of capital assets or expenses. The husband was then allocated a salary or dividends at each year end, or redeemed preferred shares, to cover his personal account with the companies.
- [175] In *Starko*, McEachern C.J.S.C. (as he then was) found that the husband's shares in the two companies were not excluded business assets, but were family assets ordinarily used by the husband for family purposes. He held, in words particularly appropriate to the facts of this case, that "the shares are a cow to be milked rather than a heifer to be bred". He noted that the husband's use of cash from the companies made no distinction between capital or income as follows:

And it is not realistic, in my view, to draw any distinction between capital and income -- when the husband needed capital for a house or a boat or a condominium in Hawaii, he got capital for it. When he needed things he sent bills or credit card accounts, if they were not already billed directly to the company, on to Edmonton for payment. These shares in my view are entirely

comparable with a liquid portfolio which produces income. The husband used it as required to support his family, and it would be sophistry to distinguish between capital and income in the particular facts of this case.

The Family Relations Act should be given a fair, large and liberal construction. And I do not think it does violence to the language of the acts or to any of the authorities to hold that both the product of the shares and the shares themselves are family assets when the spouses have supported themselves exclusively by such means for such a long period of time. I am conscious of Mr. Schuman's concern that every retired person's investments might be regarded as a family asset, if these shares are found to be in that category. I do not share that concern, because every case depends upon its own facts. This is not a usual case of a retired person having a few investments, nor is it one about the use of income from an investment. It is, as I have said, a case where the husband was not in business in order to use his investments primarily or at all for business purposes. In addition, the spouses used both capital and income as they required it.

[176] The same can be said for the respondent's Korean Properties, all of which were treated as a source of money from which the respondent would fund whatever capital or living expenses the parties required, regardless of whether or not the asset was real estate or the Suwon business, and without any distinction as between assets that were solely owned by the respondent or partially owned together with other members of his family. From even before their move to Canada, the respondent was not actively growing any business. He was, together with the claimant, living off of the Korean Properties as a whole, and this was their common intention into the future, an intention which only became more evident following their move to Canada.

[177] Consistent with the parties' intention is the fact that neither party could effectively work in Canada. They were not worried about this because they had sufficient wealth to be able to use the respondent's assets in Korea to finance their lifestyle and new investments in Canada. They both knew that they were dependent on liquidating the capital of the respondent's assets in Korea as and when needed.

[178] The Korean Properties were assets received by the respondent as a gift or inheritance from his father. I do not find it significant, when considering the parties' intentions, that the claimant made next to no direct contribution to the assets. The respondent as well made little contribution other than to the Suwon business. Moreover, despite his working for many years in the Suwon business in the expectation of securing his inheritance before his father died, he made at most modest work contributions to the business after he inherited it. While the respondent continued to be employed by the Suwon business after the family moved to Canada, his employment was at most part-time only. He had little active involvement in the running of the business, leaving the daily operations to others.

- [179] I find that the respondent's interest in the Suwon business has always been based on securing his inheritance while his father was alive, but that he has always planned to sell off the assets of the business as well as other assets gifted to him from his father to support himself and his family when needed. He shared this intention with the claimant.
- [180] I find that in the circumstances of this couple's relationship, it matters not that the Suwon business and other Korean Properties were in the respondent's name alone. The reason for this was in large part traditional and gender-based, with the husband taking a more dominant role in having direct control of assets and the wife being submissive to this control.
- [181] There was also evidence that the respondent was physically abusive and dominating towards the claimant over the years of their marriage. While past conduct of the spouses in the marriage is generally not relevant, here this context is important. It explains that although all the Korean Properties were held in the respondent's name alone and he did not inform the claimant much about them, nor did she question him about them, this does not indicate any single or common intention to keep their assets and finances separate and apart. Rather, it was part of their relationship that she would not question her husband and would simply accept his authority. The respondent would control the timing of any disposition of the Korean Properties and the claimant would defer to him in this regard, but they both nevertheless had the common intention that the entire pool of Korean Properties would be used to fund the lifestyle of both of them in the future.
- [182] It is also an important fact that the parties treated the investments in Canada as family assets. It was necessary to have the claimant's name jointly on the title to the assets in Canada because she was the one living in Canada full-time having to make many of the decisions regarding those assets, and the respondent was frequently unavailable. Through the exercise of her judgment, approved by the respondent, and using the capital from the respondent's assets in Korea as building blocks and leverage, the couple was able to invest in real estate in Vancouver and reap good financial returns.
- [183] The respondent's role was to manage the Korean Properties, and the claimant's role was to manage the Canadian properties. While the Canadian properties were registered in their joint names, and the Korean Properties were just in the respondent's name, it was clear to me that the whole of their property interests were treated by them as one pool of money from which they could together draw when needed.
- [184] The respondent's position is that what was invested in Canada was a joint enterprise but what was invested in Korea was his alone. I do not accept this view, which is self-serving after the fact of the separation. This couple clearly behaved as partners in regards to living off their investments and managing them for their future. They lived off of the Korean Properties, and expected to continue to do so in the future.

[185] I also find that it matters not that some of the Korean Properties were only part-interests in property, with the other owners being siblings of the respondent. While the respondent argued that his partial ownership of some of the Korean Properties meant that he could not liquidate his interest in those assets for purposes of supporting his family in Canada, I do not accept that argument and it is not logical. His ownership of the Korean Properties was not in any way conditional. If he could ultimately use the assets for his own use, which is his present position, then likewise he could ultimately choose to use the assets for purposes of his family in Canada. I find that the latter was his intention, with it just being a matter of when, not if, he would sell the assets in order to finance the lifestyle of the respondent and claimant in Canada.

[186] Furthermore, the fact is that the respondent was able to sell his part interests in other Korean properties in the past, despite other owners being family members or the property being part of a group of lots owned by other family members. Over time, he sold his interests in five Korean properties prior to separation, all to fund the parties' lifestyle in Canada. As I have noted, there is no basis for distinguishing the Korean properties that were sold prior to separation from those Korean Properties that happened to still be owned by him at the time of the triggering event after separation. There was no evidence that during the marriage they had ever changed their plans to live off the respondent's Korean properties, taking any revenues and selling when advantageous and when needed.

[187] I find that the fact the respondent did not sell all of his Korean Properties despite living in Canada was simply because he felt that he and the claimant did not yet need the capital to use in Canada. It was not because the assets were not available for or intended for future use.

[188] In *H.R.M. v. D.M.B.*, 2004 BCSC 147 [H.R.M.], the main issue was whether or not the defendant husband's contingent interest as a beneficiary in the income and capital of a discretionary family trust was a family asset. In finding that it was a family asset, Bauman J. (as he then was) helpfully reviewed the case law and held at para. 146:

I distil these principles in summary form from the cases:

- a contingent interest in a discretionary trust can be a "family asset";
- in determining whether the trust was ordinarily used for a family purpose, that is "in the customary mode of life of the family concerned," the fact that it is income that is used, not capital, is a factor to be considered, but it is not determinative;
- presently holding assets, or an interest therein (whether contingent or vested), to secure the family's future, to provide financial security for the family, is a family purpose provided there is evidence to support such a conclusion beyond merely talk or thought about such a possibility.

[189] In *H.R.M.*, the claimant wife did not know much about the asset at issue, the respondent's interest in a trust; neither spouse contributed to it; the income from the asset was consistently used for family purposes; and the respondent husband remained committed to

a business venture that he knew had no chance of success, relying on the fact that the family's financial security would be taken care of by the trust. The court found that the parties relied on the trust for their future financial security and this made it a family asset. A similar analysis applies here.

- [190] Because the parties had joint intentions and expectations that the Korean Properties would continue to fund their lifestyle in Canada as and when needed in the future, the Korean Properties are family assets. The respondent has not met the onus of proof of establishing that the Korean Properties are not family assets.
- [191] The claimant advanced the additional argument that if any of the Korean Assets are considered ventures or business assets, she made an indirect contribution to them by reason of her effectively running the parties' household and having primary and often sole responsibility for the children. Such indirect contributions will make a venture, or property used primarily for business purposes, a family asset: s. 58(3)(e) and s. 59 of the FRA.
- [192] The claimant also says that she made an indirect contribution to the Korean Assets because her successful management of the Canadian assets meant that the Korean Assets did not have to be depleted to the same extent they otherwise would have been to support the family.
- [193] I find that the Korean Properties fit within the description of "venture" within the meaning of s. 58(3)(e) of the FRA because they are held for investment purposes in the hopes of appreciation but with the risk of depreciation: *Laurence; Joki-Hollanti v. Joki-Hollanti*, [1990] B.C.J. No. 585 (S.C.).
- [194] I also find that the Suwon business also fits within the description of property used primarily for business purposes.
- [195] This means that the claimant's direct or indirect contributions are relevant.
- [196] The couple moved to Canada in the hopes it would offer a better future for their children and also so that eventually their children would be able to avoid some of the inheritance tax burdens of Korea. Both parties wanted to live in Canada and enjoy the lifestyle. Had the claimant not stayed in Canada and looked after the parties' Canadian properties, the household and the children, the respondent would not have been free to work to the extent he did in the Suwon business, both before his inheritance (which was no doubt necessary to inherit it), and afterwards. Furthermore, but for the claimant's indirect contributions here in Canada, managing and growing the parties' assets in Canada, the Korean Properties that still remain in the respondent's name would have been eroded earlier to support the family.

[197] I find that the claimant's management of the Canadian properties, the household, and the children were indirect economic contributions to the Korean Properties. These contributions were equivalent to money's worth contributions to a venture, within the meaning of s. 58(3)(e) of the FRA. Further, these contributions indirectly helped the respondent acquire and operate the Suwon business, such that the business was not an excluded business asset, within the meaning of s. 59(1) and (2) of the FRA.

[198] As such, the Korean Properties are family assets on this basis as well.

Conclusion regarding Korean Assets

[199] I find that the Korean Properties were intended for a family purpose, namely to support the claimant, the respondent, and their children as income and capital was needed, both on a day-to-day basis and into the future. I also find that the claimant made an indirect contribution to all of the Korean Properties, the entire pool of which can be characterized as a venture, and the Suwon business, which qualifies both as a venture and as property used primarily for business purposes. I therefore find that the Korean Properties are family assets.

[200] The Korean Term Deposit was acquired after the triggering event and is not a family asset, but it was acquired using family assets as a source.

[201] The key money loaned by the respondent for his sister's apartment is also a family asset.

[202] Finally, the Korean Pension is a family asset pursuant to s. 58(3)(d) of the FRA.

2. What is the Total Value of the Korean Assets Held by the Respondent?

[203] The claimant obtained appraisals of most of the Korean Properties. While there were valuations as at April and July 2010, there were also valuations closer to the trial date, as at April 30, 2012, and those are the valuations I will rely on. The respondent accepts these appraisals, other than with respect to the Suwon business.

[204] The values of the respondent's interests in the Korean Properties other than the Suwon business and Dongoh-ri are as follows:

Paldal Property:

₩ 1,420,588,900

Anjung Property (less expropriated parcel):

₩ 5,549,364,940

Jangan Property

₩ 2,278,065,250

Ilsan Apartment

₩ 266,000,000

Dongtan/Bansong Properties

₩ 4,274,670,000

- [205] As mentioned, the Jungnam Property seems to be of nominal value relative to the parties' overall asset picture, probably in the range of \$2,300 at best, and I am not going to consider it further in the division of assets.
- [206] As to the respondent's Korean Pension, there is no reliable evidence as to the value of the pension or even how it will operate in the future. There is evidence that the respondent has made contributions of ₩ 52,297,020 to the pension. The claimant argues that the value of the pension should be considered double that amount. The claimant bases this on drawing an adverse inference against the respondent for his failure to provide sufficient evidence, in line with *Cunha v. De Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.).
- [207] The respondent has not been upfront about his finances in the course of this proceeding, as I have noted in my comments regarding his credibility and reliability. He has not produced up-to-date bank statements or credit card statements. He only produced documentation regarding the Sook Account at the last minute, depriving the claimant of thoroughly examining that account in pre-trial discovery. He has engaged in deception of the court in pre-trial motions regarding interim support, by amplifying his expenses, minimizing or denying his sources of income or capital, and hiding his wasting of assets. Post-separation he has engaged in transactions which make no sense other than to conclude they must be designed to hide some information from the claimant (for example, paying his rent by having a friend write cheques for him).
- [208] While the approach in *Cunha* is often appropriate, we have no evidence as to what will happen to the Korean Pension in the future. I do not know that the pension will grow. I have no knowledge of the Korean pension system.
- [209] Here we have some evidence of current value of the Korean Pension which will likely be at least equivalent to the value of the respondent's contributions to it. My preferred approach is to consider that any evidence that it should be valued less than this amount would have been produced by the respondent, had it existed. Therefore, I estimate the value of the pension to be equivalent to the known contribution by the respondent, which is ₩ 52,297,020.
- [210] In addition, the Korean Term Deposit of ₩ 20,000,000 and the key money of ₩ 90,000,000 owed to the respondent must be taken into account.

Suwon business

- [211] The claimant had the Suwon business valued by a valuator with Ernst & Young, Mr. Chong-Won Kim, who is based in Korea. Using a net asset approach, the valuation determined that as at December 31, 2011, the value of the Suwon business was ₩ 4,635 million.
- [212] The respondent submits that the value of the Suwon business as of the same date should be found to be ₩ 3,550 million.
- [213] Mr. Chong-Won Kim has extensive post-secondary education, including a Masters degree in professional accounting from the University of Auckland, New Zealand. He has a Certified Public Accountant certification in Australia. After working with industry as an accountant, he joined Ernst & Young in Seoul, Korea in 2005. He provides transaction valuations and valuations for tax purposes, and has provided over 100 such valuations for businesses. He has been retained by the courts in Korea to provide independent expert valuation evidence. I found him qualified to give opinion evidence on the valuation of the Suwon business.
- [214] Mr. Chong-Won Kim provided two valuation reports, one dated in March 2011, in anticipation of an earlier trial date, and one as of April 2012, in anticipation of the current date of trial. For the latter, he provided a valuation as at December 31, 2011 which was the closest year-end prior to trial, and that is the most relevant valuation.
- [215] The respondent chose not to put in any contrary valuation, but instead to challenge the Ernst & Young valuation. The respondent submitted that the valuation as at December 31, 2011 should be ₩ 3,550,000,000 comprised of:
- (a) the "Work-in-Progress" (calves, cows and steers): ₩ 3,006,000,000;
 - (b) the "Breeding Stocks": ₩ 514,000,000; and
 - (c) the "Other Assets": ₩ 30,000,000.
- [216] The above figures do accord with the valuation of the same items in Mr. Chong-Won Kim's report.
- [217] The respondent submits that the key difference between his position and that of the valuator, Mr. Chong-Won Kim, is the treatment of cash in a bank account, described in the valuation as "Quick Assets", and items described as "Structures" and "Lease Structures".
- [218] The category "Quick Assets" was valued by the management of Suwon as at December 31, 2011 as ₩ 618 million. Mr. Chong-Won Kim adjusted this figure by deducting ₩ 40 million, representing old accounts receivable which he treated as being written-off.

- [219] The respondent argued that the Quick Assets included cash in bank accounts, some of which did not belong to the Suwon business, and that it failed to take into account large payments for expenses made in 2012, such as feed payments or inheritance tax payments. The respondent's approach therefore seems to be to value the Quick Assets at zero. I am not persuaded by these arguments.
- [220] Dealing with the latter point first, it is not logical to argue that subsequent changes in the business bank accounts should result in decreasing the overall valuation of the business, without putting forward evidence of all the changes in the business as of the later date. For example, the bank account balance may be less on a later date, but a liability shown on the December 31, 2011 date may also be correspondingly decreased or the assets of the business may be correspondingly increased as of that later date. It is necessary to look at the entire asset picture as of a certain date, not pick and choose different dates for different assets and liabilities. The snapshot of the value of the business on December 31, 2011 is the most recent and therefore the best snapshot of value that is in evidence, and that is why looking at the Quick Assets as of that date is appropriate.
- [221] There are a number of other reasons why adjusting the "Quick Assets" to zero is inappropriate.
- [222] Firstly, the respondent failed to disclose the actual bank statements necessary to perform the valuation of the cash in the business, and so the valuers had to rely on the financial statements of the Suwon business at the time. It also would be difficult to rely on the bank statements alone, as the respondent intermingled his personal finances with the business, often paying his personal expenses out of the same bank accounts which received revenues from the business.
- [223] The business financial statements relied upon by Mr. Chong-Won Kim as the source of the figure for "Quick Assets", representing the business cash, were prepared by accountants hired by the respondent, the same accountants who prepare the income tax returns for the respondent from year to year. Whatever money was in that account was his asset as sole proprietor of the Suwon business. For that reason, I consider the financial records prepared by the respondent's own accountants to be the best evidence of the value of the "Quick Assets" as well as an admission against interest that can fairly be relied on by the claimant's valuator.
- [224] Secondly, the respondent failed to disclose to his own accountants the existence of the Sook Account, in which there were often deposits of revenue received on cattle sales for the Suwon business that appeared to be otherwise "off the books" so as to limit taxes payable. However, the respondent's manager made sure that any records of expenses for the business that were paid from that account were provided to the accountants. This non-disclosure of revenue means, if anything, that the respondent's own accountants undervalued the "Quick Assets" of the Suwon Business. This weighs in favour of increasing the value of the "Quick Assets" from that attributed by the valuator, not decreasing it.

- [225] The respondent also argued that the items on the Suwon business financial statements prepared by his accountants, and shown as "Lease Structures" and "Structures" valued at ₩ 403 million and ₩ 379 million respectively, should have been given no value by Mr. Chong-Won Kim. Instead, Mr. Chong-Won Kim simply accepted those values.
- [226] The respondent's argument is that these structures are simply improvements on leased lands, and therefore have no market value because they will remain attached to the land. These are on farmlands owned by the respondent's sisters. The evidence was confusing at best as to whether or not some of these structures are moveable in whole or in part. The respondent argued that the evidence of the respondent's accountant, Miss Noh, supports the conclusion that these are not assets of the business.
- [227] I disagree. Miss Noh testified that the respondent is the one who built the structures, such as small cattle sheds. She considered this an investment in the business, and therefore an asset.
- [228] Miss Noh is the respondent's accountant and approves showing these as assets of the business on the business financial statements after applying depreciation. She appears to take into account the lifetime of the structures, and the continued right of the business to use the structures, in coming up with the value of these assets. Again, this is the best evidence. I see no flaw in the approach of the claimant's valuator in accepting the value given to those assets by the respondent's own accountants.
- [229] I also note that the valuation by Mr. Chong-Won Kim made a significant discount to the value of the cattle assets. The financial records of the Suwon business, as prepared by the respondent's own accountants, valued work in progress as ₩ 4,758 million, but Mr. Chong-Won Kim discounted this value by ₩ 1,572 million to arrive at a value of this asset of ₩ 3,006 million. This values the cattle less than the cost of raising and feeding them. This took into account factors such as a past outbreak of foot and mouth disease and imports of U.S. beef. It indicates that the approach of Mr. Chong-Won Kim to valuing the assets was very conservative.
- [230] Another item that the respondent wishes the court to treat as though it has a value of zero is the value of the vehicles of the business, which Mr. Chong-Won Kim valued at ₩ 61 million. The respondent did not direct argument to this, presumably because the value is not significant in the scheme of things. Nevertheless, I accept Mr. Chong-Won Kim's valuation of the vehicles because he based his figures on market values for used vehicles, with respect to those vehicles still being used by the business.
- [231] I note that the respondent acknowledged in argument that the respondent's carry forward of losses would result in little tax paid on the Suwon business should the assets be sold, and therefore there should be no discount on the valuation in this regard.
- [232] I therefore find that the value of the Suwon business for purposes of considering division of assets is ₩ 4,635 million.

Total Value of Korean Assets

[233] Not including the value of the Korean Term Deposit in the amount of ₩ 20,000,000, I have found the present value of the Korean Assets which are family assets to be:

Paldal Property

₩ 1,420,588,900

Anjung Property (less expropriated parcel)

₩ 5,549,364,940

Jangan Property

₩ 2,278,065,250

Ilsan Apartment

₩ 266,000,000

Dongtan/Bansong Properties

₩ 4,274,670,000

Suwon business

₩ 4,635,000,000

Korean Pension

₩ 52,297,020

Key money

₩ 90,000,000

Total:

₩ 18,565,986,110

Conversion rate

[234] Both parties have agreed that for the purpose of valuing the Korean Assets, the exchange rate of one Canadian dollar to 0.000893 Korean won is appropriate. This was the 2011 annual average rate from the Bank of Canada which applied to Korean won expenditures by the respondent in 2011.

[235] Converting the gross value of the Korean Assets which are family assets at the stated rate of exchange results in a value of \$16,579,426. This does not include the Korean Term Deposit of ₩ 20 million, or \$17,860.

[236] This is before considering debts.

3. What is the Value of the Allison Road Property?

[237] The parties agree that their assets in Canada are family assets.

[238] The main dispute between the parties regarding the value of Allison Road property has to do with whether or not the value for purposes of this litigation should include the cost of completion of construction. Uncompleted, it was valued at \$4,800,000 in an appraisal dated March 14, 2012, and this is the value that the claimant argues should be used by the Court. Completed, the same appraisal values the property at \$6,900,000.

[239] I have no difficulty concluding that this property should be valued as though completed. The construction was funded by the other family assets, by agreement. The whole premise of completing construction was that it would increase the value of the property. According to the evidence at trial, the house should have been completed by now.

[240] The best evidence, by way of appraisal, leads me to conclude that the value of the Allison Road property for purposes of apportionment of assets is \$6,900,000.

4. What is the Value of the Other Canadian Assets?

[241] In addition to the Allison Road property, the parties have the following assets in Canada which are agreed to be family assets:

- (a) the balance of proceeds of sale of the Broughton Street property;
- (b) the balance of proceeds of sale of the Cordova Street property;
- (c) the respondent's RRSP with the TD bank;
- (d) two Gordon Smith paintings; and
- (e) other household contents including a grand piano.

Broughton Street Property Proceeds of Sale

[242] The Broughton Street property was sold by court order in August 2011 (after the triggering event) for \$4,200,000. Net proceeds of sale were \$1,065,942 after payment of commission, costs of sale, and payout of a mortgage. Currently there is a remaining sum of \$375,000 held in trust by Clark Wilson LLP to secure the claimant's legal fees.

Cordova Street Property Proceeds of Sale

[243] This property sold by court order for \$5,900,000 closing on May 31, 2012 (after the triggering event), with net sale proceeds of \$2,834,855 after payment of commission, costs of sale, and payment out of a mortgage on the property. Some of the proceeds were then distributed to the parties, and \$600,000 was held back to complete the construction on the Allison Road property. The remaining net proceeds of sale were approximately \$1,693,718 at the time of trial.

The Respondent's RRSP

[244] The respondent's RRSP is valued at approximately \$91,000.

The Gordon Smith Paintings

[245] The parties own two Gordon Smith Paintings, purchased in 2004 and 2005 for \$32,720 and \$31,920 respectively. I consider the purchase prices to represent current value.

[246] The respondent says they should be treated as roughly of equal value and each party should take one painting. The claimant purchased the paintings and has a particular fondness for them, and would like to have each of them.

Baby Grand Piano and Household Furnishings

[247] No estimate of value was provided for the baby grand piano and household furnishings.

[248] The claimant is the only one of the two parties who used the piano during the marriage, as a trained pianist. The children also played the piano.

[249] The claimant says that the respondent kept the more valuable furnishings when they split up, as well as other artwork, including art by her daughter of particular sentimental value because it says "I love you Mommy". She would like to have all the artwork and the piano.

[250] These items must have some value given the parties' lifestyle but in the absence of sufficient evidence I can only attribute a value of \$10,000.

Total Value of Canadian Family Assets

[251] Adding up the above items, I find that the total value of the Canadian family assets is \$9,134,358.

5. How Should the Family Assets be Divided?

[252] The starting point under the FRA is equal division of family assets.

[253] I have found the gross value of the Korean Assets that qualify as family assets to be ₩18,585,986,110 or approximately \$16,579,426. The gross value of the Canadian family assets is approximately \$9,134,358.

[254] The FRA provides in s. 65 for judicial reapportionment of property if equal division of family assets would be unfair having regard to a number of factors. A party seeking reapportionment has the onus of proving that equal division would be unfair.

[255] Section 65 reads:

Judicial reapportionment on basis of fairness

65(1) If the provisions for division of property between spouses under section 56, Part 6 or their marriage agreement, as the case may be, would be unfair having regard to

- (a) the duration of the marriage,
- (b) the duration of the period during which the spouses have lived separate and apart,
- (c) the date when property was acquired or disposed of,
- (d) the extent to which property was acquired by one spouse through inheritance or gift,
- (e) the needs of each spouse to become or remain economically independent and self sufficient,
or
- (f) any other circumstances relating to the acquisition, preservation, maintenance,
improvement or use of property or the capacity or liabilities of a spouse,

the Supreme Court, on application, may order that the property covered by section 56, Part 6 or the marriage agreement, as the case may be, be divided into shares fixed by the court.

[256] Equal division of the Korean Assets which are family assets is impossible as this court does not have jurisdiction over foreign property. This means that the respondent will retain 100% of the Korean Assets, which are worth substantially more than the Canadian assets. This would clearly be unfair. This unfairness can be remedied by reapportionment of the Canadian family assets in the claimant's favour in a way that takes into account what would have otherwise been her entitlement to the Korean Assets if they were in Canada, and, or in the alternative, by a compensation order. In this regard, see *Tezcan; Laurence; English v. English*, 2011 BCSC 90.

[257] For the time being, when I refer to the question of whether or not equal division of family assets would be unfair, I am referring to the notional or assumed equal division of both the Canadian and Korean family assets.

[258] The evidence and submissions in this case give rise to three factors to consider in determining whether or not equal division of the family assets would be unfair:

- (a) debt;
- (b) the fact that the Korean Assets largely came from gifts or inheritance from the respondent's father; and
- (c) advances already made to the parties.

(a) Debt

[259] In determining whether equal division would be unfair, courts may consider the amount of debt carried by each party that was incurred for family purposes, under s. 65(1)(f) of the FRA.

[260] The debts in relation to the proceeds of sale of Canadian properties have been paid out. However, there are two debts to consider in respect of the Canadian assets.

- [261] There is a tax liability in the claimant's name of \$70,880 in relation to the sale of the Broughton Street property. The claimant submitted that this debt should be treated as related to the family asset and taken into account as though it was an equal liability, otherwise it would be unfair because she would end up with less than equal benefit from the sale of that property. The respondent conceded this. I accept the claimant's submission as reasonable, and find it would be unfair not to take this debt into account. I conclude that this debt should be shared equally and that the way to do this is to decrease the respondent's share of family assets by half of the debt, namely \$35,440.
- [262] There is also a joint line of credit secured against the Allison Road property in the approximate amount of \$946,827 in relation to financing the construction of the home, with the TD Bank (the "TD line of credit debt").
- [263] While the respondent argued that the TD line of credit debt was increased unnecessarily due to the claimant's refusal to consent to it being paid out by the proceeds of sale of other Canadian assets, I do not find that her position was unreasonable pending the outcome of the determination of property issues in this case. The respondent equally refused to pay out the line of credit from the sale of Korean assets. Since neither party could agree on property division issues, the debt remained in place and accruing interest during the course of this proceeding. Nevertheless, I find the general purpose of that debt to be incurred for a family purpose. As such, I conclude that it would be unfair to divide the family assets equally without taking this debt into account.
- [264] The TD line of credit debt was also used as a source of court-ordered advances to the parties, some of which was to pay for the costs of other properties owned by them, and some of which was used personally. I will address the accounting for these advances in the next section of my judgment.
- [265] There was evidence that a Korean bank loan was obtained to in part finance the purchase of the Dongtan/Bansong Properties, and it is secured against those properties. The outstanding balance of that debt is approximately \$1,450,000. I find that it would be unfair not to take that debt into account as it was incurred for a family purpose, namely, acquiring the very asset at issue.
- [266] There was also evidence that in January 2011, the respondent had an outstanding line of credit debt with the Hana Bank in Korea in the approximate amount of ₩ 236 million. This is secured against the apartment in his sister's name. The respondent submits that this debt should be taken into account and that it is now in the amount of ₩ 254 million. The respondent's evidence on this was most unsatisfactory. In direct, he was taken to a document [Ex. 7, tab 280] and asked leading questions as to whether it was a loan he took out for payment of inheritance tax owed in December 2010, to which he agreed. However, while the document indicates there was a loan taken in December 2010, which is due in December 2012, the document does not indicate the loan's purpose. I also do not know its present balance.

- [267] In cross-examination, the respondent was taken to a document which showed the dates on which he paid inheritance tax. He did not pay any inheritance tax in December 2010. After a payment in November 2009, he did not next make a payment until 2012 and he made that payment from a different bank than the Hana bank. I therefore reject his evidence that the loan from the Hana bank related to the payment of inheritance tax.
- [268] The claimant submits the Hana bank line of credit debt is a business debt that would have been taken into account already in the valuation of the Suwon business.
- [269] I find that the respondent's evidence falls short of establishing that the purpose of the line of credit debt with the Hana bank was a family purpose, or, that if it was, it has not already been accounted for in the valuation of the Suwon business. He has not persuaded me that it would be unfair not to take this debt into account in the division of family assets.
- [270] The respondent did not argue that other debts should be taken into account.
- [271] Other than as already mentioned, I do not find that the needs, capacity, or liabilities of either spouse in relation to any other individual debts is a factor that would make equal division of family assets unfair.

(b) Gifts and Inheritance

- [272] The respondent argues that if any of the Korean Properties are found to be family assets, it would be unfair to divide them equally due to the fact that these assets were largely acquired by the respondent as gifts or inheritance from his father. This is a factor to be considered under s. 65(1)(d) of the FRA.

- [273] The respondent submits as follows:

In considering reapportionment of assets acquired during the marriage by way of inheritance, the court is required to consider both the length of the marriage and the length of time the marriage subsists following the receipt of the inheritance. Where inheritances are acquired near the end of a marriage (within 4 years of the separation) they are routinely reapportioned in favour of the inheriting spouse.

- [274] In support of this submission, the respondent relies on the authorities of *M.A.L. v. T.D.L.*, 2007 BCSC 287 [M.A.L.]; *King v. King*, 1999 CarswellBC 1518 (S.C.) [King]; *Anderson v. Anderson*, 1996 CarswellBC 2271 (S.C.) [Anderson (1996)]; and *Anderson v. Anderson*, 2004 BCSC 1434 [Anderson (2004)].
- [275] However, I find the facts of the above authorities distinguishable from the facts here. There was no suggestion in the examples relied on by the respondent that there was evidence that both spouses had planned to live on the gifts and inheritances as their main source of income and capital or that both had contributed to the maintenance or growth of the gifted or inherited assets.

- [276] In the present case, the respondent acknowledged in his evidence that the financial plan of the family prior to separation was always to live on the gifts he had received from his father and the inheritance he was expected to receive. This was in effect their only financial plan since moving to Canada from Korea in 2000. I find as a fact that both parties expected and planned on the fact that the respondent's gifts and inheritance would be the asset base that would provide all necessary income for them and their children to live on in the future. Neither one sought any independent career, nor were deterred from moving to Canada despite having poor English language skills.
- [277] I have already found that the claimant's role in the family indirectly assisted the respondent in preserving his Korean Properties and securing his inheritance, as she was able to look after the family in Canada and grow their asset base here, freeing up the respondent to travel to Korea to spend time with his father in the Suwon business. The parties' expectations that the respondent would inherit the Suwon business were longstanding, as were the claimant's indirect contributions, well before the actual inheritance of the Suwon business occurred.
- [278] Furthermore neither the respondent nor the claimant had any expectation that the claimant should look for any other source of support and she does not have the skills to find paid employment in Canada. It would be unfair to now conclude that she was not entitled to rely on the Korean Properties to secure her future.
- [279] Further in M.A.L., King, Anderson (1996) and Anderson (2004), the spouse benefitting from reapportionment of the inheritance was also the spouse most in need of financial assistance to become self-sufficient. In this case, the opposite is true. While the respondent would benefit if the inheritance is not divided equally, the claimant is the one with less earning capacity and a greater need for assistance to become self-sufficient.
- [280] I therefore find that the fact the Korean Assets were largely acquired by inheritance or gift does not make equal division of family assets unfair.

(c) Advances and Expenditures Post-Separation

- [281] Both parties wish to have the court take account of what the other side spent post-separation.
- [282] Before I deal with the parties' expenditures post-separation, there was also some evidence regarding what the respondent spent during the marriage.
- [283] One of the most significant issues in this regard had to do with a large sum of cash on the books of the Suwon business, over ₩ 2 billion, that went missing in the year that the respondent inherited it in 2006. In his evidence at trial, the respondent had a number of speculative answers as to what happened to it which did not find support in available documents. The claimant argued at trial that the respondent should account for the missing inheritance money.

[284] Following the end of trial, by memorandum to counsel dated November 30, 2012, I sought further submissions on issues unrelated to the missing inheritance money. In the course of written submissions filed by the respondent in response on December 21, 2012, the respondent wrote:

The respondent seeks leave to reopen the trial and submit further evidence and documents relating to the use of the inheritance funds in 2006 and 2007 in order to respond to the Claimant's allegations that those funds were improperly dissipated or ought to be accounted for in the judgment of this Honourable Court.

[285] Other than the above passing reference, the respondent took no steps to actually bring a formal application and so by memorandum to the parties dated January 2, 2013, I asked for confirmation that the submissions in respect of the request for leave to re-open were complete.

[286] This ultimately led to the respondent bringing an application before me on March 12, 2012 to re-open the trial to permit the respondent to call evidence on what happened to the missing approximately ₩ 2 billion cash that he inherited in 2006. The application was supported by an affidavit of the respondent in which he stated he was accounting for the missing money. He referred to various convoluted transactions in 2006, suggesting he put ₩ 100 million into the Suwon business and that he took the rest, approximately ₩ 1.9 billion, and managed the funds as personal savings in various accounts, with some of it being invested in the Dongtan/Bansong Properties. The respondent purported to attach banking documents from numerous accounts and Suwon business records in support.

[287] Notably in making his application, the respondent did not provide any evidence as to why he was not able to provide the evidence before or during trial. The question of what happened to the inheritance money had been a live issue in the litigation years before trial, and the respondent was been ordered to produce relevant records covering the same time period by order of Cullen J. made March 4, 2010. The respondent had ample notice that the claimant was going to ask the court to draw adverse inferences due to his failure to produce evidence on this issue, but he had not bothered to obey the order of Cullen J. or prepare his evidence to address the issue at trial. His affidavit evidence in support of his application to re-open, seeking to explain what happened to the money, was a reconstruction based on documents that he had not previously produced, despite the court order that he do so.

[288] Counsel for the claimant opposed the application to reopen and pointed out that the documents attached to the respondent's affidavit were not even the ones referred to in the body of his affidavit, but were from different years (albeit from years that the claimant also had been previously ordered to produce but had not). Counsel for the respondent replied that he had now brought to court the relevant documents attached to a new version of the affidavit. This production of documents to the claimant in court on March 12, 2013 was more than three years after the above-mentioned order of Cullen J.

[289] The law regarding reopening a case after the close of trial has been canvassed in many authorities, including *Bronson v. Hewitt*, 2010 BCSC 871, in which Goepel J. held at para. 33:

From my review of the authorities I take the law to be that new evidence will only be admissible on a reconsideration application if it would likely change the result and, except in exceptional circumstances, the evidence could not have been obtained by reasonable diligence before the trial. In exceptional circumstances, in order to prevent a miscarriage of justice, fairness may dictate that new evidence will be admissible even though the evidence may have been discoverable prior to trial. New evidence will generally not be admissible in situations where the evidence was not called at trial because of tactical considerations.

[290] I note that in this case the application to reopen the trial was before final judgment had been rendered, and differs from some other authorities in that regard. Nevertheless, I did not allow the application to reopen the trial. There are three main reasons for this.

[291] The first reason for not allowing the respondent's application to reopen is that I consider that the respondent does not have a reasonable excuse for not producing the evidence well before trial or during the trial. Given the procedural history of this case, it can only be concluded that he deliberately disobeyed court orders to produce the information for tactical reasons. It would be unfair to the claimant to allow the respondent to now supplement his evidence at trial by pointing to select records, the authenticity of which the claimant will not have had the opportunity to challenge in pre-trial discovery. This is especially so when he has not produced his full records. I also note that the authenticity of records produced by the respondent cannot be taken for granted, and often the records are in the Korean language adding to the time and burden on the claimant to test them.

[292] A second reason for not allowing the application to re-open the trial is that even if I was to admit the evidence on the respondent's application to re-open, his evidence would be of questionable value. The respondent's testimony at trial revealed that he was unreliable and incredible when it came to explaining past financial transactions. His casual way of giving evidence at trial on the issue, and then after-the-fact trying to reconstruct through piecemeal and partial document production, and his sloppiness in putting together his affidavit without apparently taking the care to attach the correct documents and without giving the claimant advance notice of the documents, are just examples of his unreliable approach. His evidence also does not attempt to explain what ultimately happened to the money, raising more questions: did he spend it all, or is it captured in other assets we know about, or is some of it in bank accounts or assets that we do not know about?

[293] The third reason for not allowing the respondent's application to re-open is that I do not consider that the evidence will change the result, or to put it another way, that there will be a miscarriage of justice if it is not admitted.

- [294] The claimant is correct in arguing that the courts can and do draw adverse inferences when there has been non-disclosure by a party, and in this case there was certainly non-disclosure and inexcusably late disclosure by the respondent of highly relevant information that should have been available to him. I have reached negative conclusions about the respondent's credibility.
- [295] But the respondent is equally correct in making the point that upon a marriage breakdown the court does not engage in a forensic accounting exercise of everything that was spent during the marriage: *Newson v. Newson* (1986), 3 B.C.L.R. (2d) 1 (C.A.) at para. 40.
- [296] The respondent's evidence indicated to me that he was someone who, during the marriage, did not exercise any particular discipline in his or the claimant's finances: he moved money and assets around, bought and sold assets, and spent freely, without any particular plan other than the plan that all of these assets were at his disposal to provide for his and the claimant's lifestyle and future financial security, and that of their children. In light of the size of his asset base, he was unconcerned about maintaining close control over his finances. It would be unfair in light of that lack of discipline to require him to account for all of his spending during the marriage.
- [297] I do not consider it necessary to do a forensic accounting of the past expenditures during the marriage, going back to 2006.
- [298] This does not mean that the respondent should not be faulted, and his overall credibility negatively assessed, for deliberately ignoring prior court orders for production of documents. However, when it comes to assessing whether or not there has been a wasting of family assets, or advances that need to be accounted for, I have decided that it is only appropriate to address post-separation use of assets.
- [299] Each party says the other wasted assets post-separation: the claimant says that the respondent has not accounted for all the money he spent gambling nor other money that went missing; the respondent says that the claimant used excessive amounts of money advanced to her by court order (from the line of credit or proceeds of sale of Canadian family assets) for her own legal fees or living expenses which is not a family purpose.
- [300] I consider that the parties' spending of court-ordered advances or dissipation and wasting of family assets post-separation is a circumstance that can and should properly be taken into account when considering whether equal division of assets would be unfair pursuant to s. 65(1)(f) of the FRA.
- [301] As a starting point, the parties each ask the Court to consider advances made to each of them by way of court orders, most of which were paid from the proceeds of sale of their Canadian properties which were held in trust, but some of which were paid out of the joint TD line of credit. As mentioned, my approach is to treat the TD line of credit debt as a joint liability, but to make compensation orders for any advances that need to be accounted for.

[302] The claimant provided a helpful chart of the advances made by way of court order which I have relied on as accurately tallying the advances made to each of the parties by way of interim court orders.

Advances to the claimant

[303] The claimant received \$2,559,815 by way of court ordered advances as of August 30, 2012.

[304] The claimant was making all expense payments required on the Canadian family assets, such as servicing debt, property maintenance fees and taxes, paying for renovations, and other expenses. These payments were necessary to preserve the parties' Canadian family assets pending sale, trial, or division.

[305] The respondent concedes that advances to the claimant for expenses that were incurred in relation to preservation of the parties' family assets in Canada were advances that do not have to be taken into account and no adjustment is necessary. I agree. I will call these "property expense advances". However, the respondent does not necessarily concede which court ordered advances fit into this category. Some are obvious by the terms of the court order, some were not specified.

[306] There is agreement that the claimant required approximately \$20,000 per month after separation to take care of expenses related to the parties' Canadian properties, such as for debt payments and other expenses.

[307] The respondent calculates the property expense advances to the claimant as \$749,277.11 but did not provide a complete breakdown. The claimant calculates these advances as \$846,188.07 to the end of August 2012, plus an additional amount for Allison Road property tax expenses for \$40,280.29, and provided a table which listed these advances.

[308] I accept the claimant's figures as correct and find that the claimant does not need to account for \$886,468 as these were property expense advances made to her that were necessary to maintain the parties' family assets pending trial.

[309] The respondent's position is that after deduction of property expense advances, the claimant has to account for the rest of the advances she received, which she either spent on legal or expert fees in relation to this litigation, or on living expenses for herself and the children.

[310] I accept this as correct and find that the claimant must account for \$2,559,815 in advances less \$886,468, namely the amount of \$1,673,347, but this is subject to being off-set by the following:

- (a) any amounts that the respondent must account for as advances or wasting of family assets pending trial;
- (b) whatever compensation payment the respondent owes the claimant on the division of property; and

- (c) whatever amounts that the respondent owes by way of retroactive child support and spousal support.

Respondent's Advances or Other Dissipation of Assets

- [311] The respondent also received advances from the proceeds of sale of the Canadian family assets by way of court orders pending trial, although he received less than the claimant. He was not paying any child support, spousal support, nor was he paying most of the expenses to maintain the Canadian properties.
- [312] The amount of court-ordered advances that the respondent received was \$1,353,897.08.
- [313] Approximately \$166,402.50 was advanced to the respondent as property expense advances, and he is not required to account for those. Nor is he required to account for an advance he received in relation to the Allison Road property taxes in the amount of \$8,068.43 as this too relates to maintenance of the Canadian family assets pending trial.
- [314] This leaves \$1,179,426 of court advances for which the respondent must account.
- [315] It should be noted that included in the amounts received by the respondent pursuant to court order is the amount of \$377,862 representing the proceeds of the expropriation of part of the Anjung Property. Since I have concluded that this property was a family asset, the respondent is not excused from having to account for these proceeds.
- [316] In addition, post-separation and the triggering event, the respondent purchased the Korean Term Deposit previously mentioned in these Reasons in the amount of ₩ 20 million. He used family assets as the source of funds for this term deposit. The value in Canadian dollars using the agreed conversion rate would be roughly \$17,860. It would be unfair to the claimant to not take this into account.
- [317] Furthermore, the claimant spent considerable time at trial showing the wasting of assets by the respondent post-separation.
- [318] The respondent was spending large sums of money on such things as gambling and holidays in 2011 and at least up to March 2012 (when the sparse information he produced ends). We know this from credit card summaries that he belatedly produced.
- [319] The respondent testified under cross-examination that he usually paid off his credit cards with money from the account ending 111, which was the main Suwon business account. That account shows numerous withdrawals but there was not sufficient detail in the evidence for me to be able to determine exactly how much the respondent withdrew personally.

- [320] Nevertheless, it is fair to conclude that the only sources of money used by the respondent for living expenses post-separation, including to pay his credit cards, had to be family assets, likely the Suwon business and also some of the rental income from some of the Korean Properties. He had no other disclosed sources of money.
- [321] Given that they came from the use of family assets, I find that this spending was wasteful and a dissipation of family assets for which the respondent should account.
- [322] The evidence indicates that the following sums were spent or transferred by the respondent and unaccounted for post-separation:
- (a) \$400,000 transferred to Canada on April 14, 2009;
 - (b) \$11,200 transferred to Canada on April 15, 2009;
 - (c) approximately ₩ 0.671 million transferred to Canada on September 11, 2009;
 - (d) ₩ 10.8 million transferred to Canada on September 11, 2009;
 - (e) ₩ 22.19 million transferred to Canada on November 4, 2009;
 - (f) ₩ 2.28 million transferred to Canada on April 5, 2010;
 - (g) ₩ 10.74 million transferred to Canada on May 3, 2010;
 - (h) ₩ 74.249 million transferred to Canada on June 22, 2010;
 - (i) \$50,118 transferred to Canada on April 15, 2010; and
 - (j) money spent gambling, on cash advances, and on other personal expenditures, which is difficult to calculate with precision but which on all the evidence (bank statements and credit card statements) I conservatively estimate to have been at least approximately \$250,000 in 2011 and at least \$30,000 in the first three months of 2012.
- [323] The above totals \$741,318 plus ₩ 120.93 million. Using a conversion rate of 0.000893 converts the amount in Korean Won to approximately \$107,990. Adding in the \$17,860 (or ₩ 20 million) taken by the respondent to purchase the Korean Term Deposit, I conclude that it is fair to estimate that the respondent has used or dissipated \$867,168 of the family assets pending trial. I consider this a very conservative estimate, as there were many other unexplained transactions and the respondent's lack of credibility and non-disclosure of documents could support a larger estimate in the claimant's favour.
- [324] The claimant's submissions also pointed out an unexplained deposit of approximately ₩ 112.627 million deposited in the respondent's Hana bank account in Korea on January 17, 2011 which the respondent could not explain. Furthermore, the claimant pointed to several withdrawals from the Suwon business bank account ending in 111, which the claimant argued totalled approximately ₩ 2,023.525 million in 2011 and ₩ 164.969 million in the first three months of 2012. The claimant suggested that inferences should be drawn against the respondent with respect to these unexplained amounts. These amounts total ₩ 2,301.122

million which at a conversion rate of 0.000893 amounts to \$2,054,902.

- [325] Due to the vagueness of the evidence, I have declined to take these latter sums into account as though they represent wasting of family assets. Nevertheless, I am mindful that the respondent's evidence left unanswered many questions, and suggests that he had other sources of funds on which to live. This supports the conclusion that the estimates of the respondent's wasting of assets post-separation are likely quite conservative.
- [326] It has to be acknowledged that I have not been given the type of forensic accounting assistance that would allow for a detailed analysis of either side's expenditures post-separation. Ultimately it is a question of fairness to both parties when considering how to treat post-separation expenditures by the parties.
- [327] I conclude that the respondent must account for \$1,179,426 plus \$867,168 which totals \$2,046,594.
- [328] Simply off-setting the amount the claimant must account for of \$1,673,347 leaves the respondent owing the claimant \$373,247 by way of a compensation payment for advances and wasting of assets post-separation. This will be in addition to any compensation payment in relation to property division, and in addition to child or spousal support.

Conclusions Regarding Property Division

- [329] Taking into account the above factors, I conclude that the following orders are warranted so as to notionally divide family assets equally:
- (a) the respondent's Korean Assets will remain in his ownership and control. The value of the Korean Assets which are family assets (i.e. all but the Korean Term Deposit) total a gross value of ₩ 18,565,986,110 or approximately \$16,579,426. The respondent is to be solely responsible for the Korean bank loan used to finance the Dongtan/Bansong Properties in the amount of \$1,450,000, but the claimant should notionally bear one-half of this debt as well. Thus, the net value of the Korean Assets which are family assets should be considered to be \$15,129,426 for purposes of dividing family assets;
 - (b) the gross value of the Canadian family assets is approximately \$9,134,358. The claimant will be solely responsible for the tax liability of \$70,880, but the respondent should notionally bear one-half of this debt as well. Thus, the net value of the Canadian family assets will be considered to be \$9,063,478. All of the parties' Canadian family assets as previously described in these Reasons (the Allison Road property, the remaining trust funds representing proceeds of sale, the respondent's RRSP, the piano, two Gordon Smith paintings) are to be transferred into the possession and sole name of the claimant and the respondent will not retain any interest in them. The respondent may retain the furnishings currently in his possession other than the grand piano and Gordon Smith paintings but I will attribute no value to the furnishings for purposes of this analysis. I understand the parties to have agreed in submissions that division of any portion of the RRSP should be by way of

spousal rollover in accordance with the Income Tax Act and I so order;

- (c) subtracting the net value of the Canadian family assets from the net value of the Korean family assets leaves the respondent with family assets worth \$6,065,948 more than the claimant. The respondent is therefore ordered to make a compensation payment to the claimant in the amount of one-half of this, namely \$3,032,974.

[330] As well, the respondent is required to make a compensation payment to the claimant of \$373,247 in relation to his pre-trial advances and dissipation of assets (this is net, after being off-set against the pre-trial advances for which the claimant must account).

[331] The total of the two above compensation payments owed by the respondent to the claimant is \$3,406,221.

[332] The respondent did not advance any evidence that he will suffer adverse tax consequences if he is required to make a sizeable compensation payment to the claimant. Indeed, the evidence was that if he sold the Suwon business he would not suffer adverse tax consequences.

[333] This compensation payment owed by the respondent to the claimant will be reduced by the amounts of advances to the claimant from September 2012 to present, to the extent those advances were funded from the joint TD line of credit. These may be in the range of \$31,000 per month to \$25,000 per month depending on when she moved into her current residence. I consider these advances to be on her own account.

[334] In addition, both parties are guarantors of the TD line of credit debt which is secured against the Allison Road property. The respondent is ordered to pay to the claimant a compensation payment equal to one-half of that debt plus the interest running on his one-half share of that debt to the time of his payment. I have noted that the debt is in the approximate amount of \$946,827 and so one-half will be approximately \$473,413 (subject to adjustment to take account of any interest on that debt accruing to date of this judgment, and prior to payment).

[335] The claimant will have no obligation (although she is free to do so) to take steps to release the respondent from the TD line of credit debt until the respondent makes his compensation payment to her, but once he does so, the claimant must take all steps to remove him from liability for any remaining debt.

[336] The parties each have bank accounts as well which I have not taken into account in valuing assets. Both sides submitted that the joint accounts should be closed and the assets in them divided equally and I agree with this conclusion. There was not sufficient evidence and submissions for me to be able to reach conclusions regarding the parties' accounts in their individual names, and I simply order that each side may retain the accounts in their individual names (with the exceptions of the order I have made regarding the respondent's RRSP).

[337] I also note that the parties jointly hold a RESP in relation to their son, in the approximate amount of \$9,000. It is not contested that this should be divided equally, and I so order.

[338] Likewise, the parties shall retain the vehicles registered in their individual names and be responsible for any personal debts not otherwise mentioned.

6. What is the Respondent's Income and Should Income be Imputed to him?

[339] The respondent acknowledges that he is responsible for payment of some child support and spousal support and that therefore his income must be determined. Both parties treated the determination of income as the same for both child and spousal support purposes, which I have taken as a concession based on the facts of this case.

[340] The respondent in his submissions summarized his income as reported at line 150 of his Canadian tax return as follows:

2002

\$170,416

2003

\$153,112

2004

\$146,411

2005

\$265,936

2006

\$335,820

2007

(\$226,983)

2008

\$77,869

2009

\$17,506

2010

(\$717,026)

2011

(\$451,566)

- [341] The respondent distinguishes the 2005 tax year because it included a capital gain on the sale of one of the Canadian properties, the Nicola Street property, and submits that his income in the years prior included some rental income from that property.
- [342] Furthermore, the respondent submits that his Canadian tax returns were based on his Korean tax returns, which included rental income from the Paldal Property which he did not receive.
- [343] In addition, the respondent submits that the Suwon business has been losing money for years, even taking into account unreported income received in the Sook Account. That is why the respondent shows losses in some years. There is some evidence that the beef industry in Korea did suffer a downturn in recent years and this was taken into account in the valuation of that business.
- [344] I find that respondent's past tax returns are not a reliable source for determining his income and that his submissions on income lack credibility due to his non-disclosure and the many gaps and inconsistencies in his evidence.
- [345] Determining the respondent's income is not an easy task. He has been self-employed through the Suwon business; he has not reported all of his income to tax authorities or in timely disclosure in this proceeding; he has run personal expenses through the business; and he has regularly drawn out capital from the business as well. He also has owned, owns, or partly owns properties in Korea which earn rental income, and has not reported this income to the tax authorities. It is clear that these are many of the circumstances set out in s. 19 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], for which the court may impute income.
- [346] The respondent conceded that income should be imputed to him rather than relying solely on his reported Suwon business losses. The respondent argued that there are two options available. The court may:
- (a) impute income to him based on his ability to earn income; or
 - (b) impute income to him on the basis of a reasonable return on his available, liquid assets (those he can readily sell).
- [347] Under the first approach, looking at historical reported income, the respondent submits that an income of ₩ 128,476,627 can be imputed to the respondent. This works out to an income of just over \$112,000. The respondent submits that this should be the figure used for retroactive support.
- [348] In contrast, in an affidavit sworn early on in these proceedings in August 2009, the respondent said that it was difficult to estimate his income that year but that he would hope that it would be at least \$150,000. He said this in an effort to suggest that his income had dropped significantly and that therefore the couple's spending should be reduced. As was

established in cross-examination, he made that estimate more than half-way into the year so would have had a good basis for predicting his income. Then, on December 7, 2009, the respondent swore another affidavit in which he estimated his income to be \$150,000 or less. This was eleven months into the year. He admitted in cross-examination that he would have known the relevant information about the business as of that date. Yet in his income tax return for 2009 he claimed that his income was only \$17,500. In that same year, he purchased the Korean Term Deposit of ₩ 20,000,000 (approximately \$17,860). This is inconsistent with him having so little income, as most people earning such a small income would not be in a position to save it.

- [349] I therefore do not accept the respondent's submissions at trial that a past income of only \$112,000 should be imputed to him. I reject his approach of estimating income based on his historical earnings, given that the respondent's evidence as to his past earnings is so unreliable.
- [350] If one was to impute income to the respondent under the second approach, a return on his assets, the respondent submits that he is unable to dispose of assets jointly owned with his siblings and these should not be counted. Even if this is true (which I do not accept), I note that this does not mean he could not earn a return on these investments. He also discounts the value of the Suwon business. But based on what the respondent says are the net values of the assets he can dispose of totalling ₩ 5,976,276,000, the respondent submits that a 3% return on those assets can be imputed to him as income, amounting to \$156,697.97. The respondent submits that this would be a reasonable figure to rely on for imputing income to him going forward.
- [351] The claimant argued that this second option is one available approach for calculating future child support but disagrees with the numbers used. The claimant submits that the respondent has more assets available than assumed in the respondent's calculations. As well, the claimant submits that a reasonable rate of return on the assets should be assumed to be 5%, not the 3% figure submitted by the respondent.
- [352] Dealing with the appropriate theory for determining income, I agree that the most reasonable approach is to impute income to the respondent based on a return on his assets. It is consistent with the facts as I have found them: that at the very least since moving to Canada in 2000, both parties expected to and did live off their entire pool of assets including capital, rather than expecting to earn significant independent employment incomes.
- [353] As for whether the return on investment should be 3% as submitted by the respondent or 5% as submitted by the claimant, neither side called evidence from a financial expert on this point. The respondent submitted that the "Bank of Canada Prime Business Rate (which has remained 3% since September 2010) is an appropriate rate of return". In the absence of evidence, I am unwilling to assume or take judicial notice of the higher figure. I find that the respondent's submission of a 3% figure is reasonable.

- [354] I have concluded that the value of the respondent's Korean Assets is approximately \$16,600,000. I do not accept the respondent's argument that he is unable to earn a return on some of his assets because he is only a part-owner. But it is fair to subtract from this the debt relating to the Dongtan/Bansong property of approximately \$1,450,000. Rounding down his available assets to the round number of \$15 million, a 3% return would generate \$450,000 income per year.
- [355] In considering whether it is reasonable to impute an income in the order of a magnitude of \$450,000 to the respondent, I find it helpful to consider his spending habits.
- [356] The claimant argued that another approach to imputing the respondent's past income is to base it on his pattern of spending. There are a number of authorities which have considered this as a factor in imputing income, including *Motyka v. Motyka*, 2001 BCCA 18, and *Yim v. Fan*, 2003 BCSC 959.
- [357] The courts are to consider the parents' "means" not just income, as held in *Leskun v. Leskun*, 2006 SCC 25, and *Griffiths v. Griffiths*, 2006 BCSC 1077. A parent's means include all financial resources, including capital assets, as noted in *Vey v. Vey* (1979), 11 B.C.L.R. 193 (C.A.), and *Bullock v. Bullock*, 2007 BCSC 318.
- [358] Ultimately what the court is interested in determining is what money does a parent have available for child support: *Kowalewich v. Kowalewich*, 2001 BCCA 450 at paras. 28, 43-45.
- [359] I consider that in a case like this, where the parent himself is not a reliable source of information about his income due to his non-disclosure and the irregular bookkeeping regarding his business, looking at that parent's personal spending patterns may be a good way of determining what money was or is available for child support.
- [360] Here the respondent spent significant sums annually on items such as gambling, golfing, and shopping. Whether this was based on his income or use of capital I do not know given the problems with his evidence. But the fact that he had enough money available to spend large sums on items for his personal pleasure is good circumstantial evidence from which to infer that more money was available for the more serious obligation of child support.
- [361] That this is a reasonable inference is supported by the evidence of the wealthy lifestyle of the parties both before and after separation.
- [362] Pre-separation the parties had their children in expensive private schools, and they made large donations to those schools; they travelled and stayed in fine hotels; they lived in expensive and well-furnished homes; they purchased expensive cars (a \$60,000 Lexus in 2000; a \$150,000 Mercedes in 2003; and a \$150,000 Range Rover in 2008); and they purchased expensive fine art. All of this lavish spending continued uninterrupted, despite the respondent's post-separation claims that his business was losing money in the last few years of the marriage and afterwards.

- [363] I find that the respondent's spending habits were inconsistent with his claims that his business was losing so much money that he was virtually without income. The respondent had to have a significant source of money to support the lifestyle that he and his family were leading. Indeed, the respondent did not curtail his lifestyle post-separation. Whether his sources of money were capital or income does not really matter if the supply is sufficiently ample to consider that it is money available for child support.
- [364] The next question then, is what were the respondent's spending habits post-separation? Unfortunately the evidence in this regard was difficult to sort out as the respondent did not produce all of his relevant banking statements nor credit card statements.
- [365] Indeed, the respondent only produced a summary of a credit card's statements, not the actual credit card statements themselves. The summary document, as I have noted above in relation to his credibility, was produced twice. On the first version that he produced, during pre-trial proceedings, he omitted showing his gambling expenses. It was only in the second statement produced just prior to trial that the summary revealed the amounts being spent by the respondent gambling. But he still did not provide documentation as to which credit card he used, how the credit card debt was paid off, or statements of his other credit cards.
- [366] The claimant argues that in 2011 the respondent was spending approximately \$40,000 per month which suggests he must have had an income of \$480,000 per year.
- [367] The respondent argues that the claimant's figures are incorrect. The respondent argues that he spent approximately \$244,000 in 2011.
- [368] It was at least conceded by the respondent in argument that the respondent spent ₩ 115,782,666 on just one Korean credit card for gambling in 2011, or \$103,394. He also made cash withdrawals on this Korean credit card during the same period of ₩ 31,645,137 or \$28,259. The respondent also withdrew money from a Korean bank account for gambling during 2011 of ₩ 31,420,000, which is another \$28,058. Also, on his Canadian credit card with TD Canada, the respondent spent another approximately \$26,603 gambling in 2011.
- [369] I have already found that in 2011, the respondent spent at least approximately \$250,000 on personal expenditures. I find that close to the majority of these expenditures were on personal entertainment such as gambling.
- [370] Although he has not produced all information up to trial, he continued spending thousands of dollars gambling in 2012. To be spending this kind of money on this kind of activity, without any explanation, leads to the natural inference that he had much more money available to him.

- [371] It was also established in cross-examination of the respondent that he spent significant sums in duty free shopping and on a golfing trip to Chicago in 2011 on one of his credit cards (statements for the other card not having been produced). He also regularly took out large cash advances on his credit cards. In 2012, he went on a golfing trip to Japan. This was not the behaviour of a man whose only source of income has dried up or who has a small income.
- [372] Since the marriage breakdown, the respondent has agreed that his son should remain in private school (where tuition alone is \$20,000 per year not including a number of other expenses), and that his daughter should continue to attend university (where tuition alone is \$9,000, not including any living expenses). The total monthly expenses for this kind of education needs a larger income than \$100,000 to support. The respondent at no time suggested that when he was gambling he was throwing away his children's tuition, which would be the case if his assertions as to imputed income were accepted. For example, if the court should only impute to him past income of \$112,000 as submitted by the respondent, then this would mean he spent more than this on gambling with nothing to spare for his children. This would take an incredible degree of callousness and disregard for his children's needs and I do not accept it to be true.
- [373] I conclude that the respondent's pattern of spending is consistent with him enjoying at least a 3% return on his approximately \$15 million net worth of Korean Assets, namely \$450,000. This conservatively does not take into account the Canadian assets.
- [374] Considering the adverse inferences that have to be drawn against the respondent due to the respondent's poor disclosure, and all of the available sources of money (his business, his rental properties, and his assets), I find that imputing to the respondent a past annual income since separation of \$450,000 is a conservative but reasonable and fair estimate.
- [375] Going forward, the respondent will be left with between approximately \$11.6 million and \$12 million worth of assets once he complies with the orders I have made regarding division of property and related compensation payments.
- [376] Considering a 3% return on assets within this range, I find it is reasonable to impute an income to the respondent of \$350,000, going forward.

Expenses

- [377] The respondent listed in his Form F8 Financial Statement sworn June 4, 2012 (at the start of trial) that he had a monthly expense of \$5,000 related to caring for his mother, whose age he estimated at trial was approximately 87. He repeated this position in evidence.
- [378] Earlier in interim applications dealing with issues of support and the respondent's income, the respondent swore an affidavit on December 7, 2009 claiming that he is obliged to and does pay his mother \$5,000 per month plus all rental income from two properties rented to a ginseng farmer (Jangan and Ansung), the latter of which is "approximately \$28,000 over

the past five years". At trial, he admitted that this was not true, first asserting that he had paid his mother \$280,000 plus \$60,000 a year, and then changing his mind and admitting that his evidence was confusing.

[379] If the respondent does incur an expense relating to supporting his mother currently, I find that it is not one that should be taken into account in considering what income he has available for child support, or even for spousal support, for the following reasons:

- (a) the respondent's duties to his child and his spouse are a matter of Canadian law, but his counsel did not argue that he had any legal duty to support his mother. It is a fine way for him to spend part of his income, and the claimant is supportive of him doing so if it is true that he does, but it is simply a choice that he makes and not something that should be considered as reducing his income for purposes of calculating his child and spousal support;
- (b) the respondent did not explain why it is that his mother requires \$5,000 per month, and so there is no evidence on what proportion of this relates to reasonable living expenses, and what does not;
- (c) the respondent did not appear to consider himself duty-bound to pay this expense until after he separated from the claimant. The respondent says that his mother was paid in part from the Sook Account, but the bank records he points to indicate that the payments began December 24, 2009 post-separation and indeed post the December 7, 2009 affidavit that he swore. Prior to that, there is only one record of payment to his mother that he could point to, in October 2005. This was while the respondent's father was still alive and so is not evidence that the respondent has felt obliged to support his mother since his father's death; and
- (d) the respondent admitted in cross-examination that his mother's living expenses are paid out of rental income from properties he either owns or partly owns together with his siblings. However, he has not disclosed this income to taxation authorities or in his Form F8 financial statements.

[380] Furthermore, given all of the above and the respondent's many problems with credibility when it comes to his finances, I am not satisfied as to the truth of his assertion that he is required to pay \$5,000 to support his mother each month or that he did so prior to separation. I find that it is more likely that there is no such obligation, nor historic payments to his mother, and that if he has made payments to his mother since separation, it is simply to diminish funds available to meet his obligations to the claimant.

7. What is the Claimant's Income, and Should Income be Imputed to her?

- [381] The claimant is a trained musician who in the early years of marriage tutored piano students. However, she has not held employment since the children were born. I find that based on her age and English language skills, it is very unlikely that she could attain employment in Canada. Given that Canada is the children's home, returning to Korea to start a career is not an option either.
- [382] The respondent submitted that an income of \$20,000 per year should be imputed to the claimant on the theory that she could tutor piano students here. I find that this is purely speculative. There was no evidence on which I could conclude that this is a reasonable possibility.
- [383] Nevertheless, it strikes me that since both the respondent and the claimant were planning on the move to Canada to live off the parties' assets, then an income based on a return from those assets can equally be imputed to the claimant as it can to the respondent. The claimant conceded as much in submissions. Indeed, since living in Canada, the claimant has used capital to invest in real estate and then she and the respondent have reaped the rewards of those investments.
- [384] I find therefore that the best approach on the facts here is to impute a return on investments as the income of both parties going forward. Since the orders I have made dividing property are intended to equalize the parties' assets, the parties should be able to earn equal incomes in the future.
- [385] However, retroactively, the claimant was not able to fully use the capital of the assets because of restraining orders, other than through advances on those assets ordered by the court. I have taken these advances into account in dividing property.
- [386] While the respondent clearly considered his Korean Assets as available to him, or he would not have been able to spend the way he did post-separation, I find that the claimant did not have the same freedom. Instead, she was largely dependent on advances on the proceeds of sale of the Canadian properties, as ordered by the court on an interim basis. I attribute to her zero income post-separation and prior to this judgment.
8. What is an Appropriate Amount of Child Support, Retroactive and Ongoing, that should be paid by the Respondent?
- (a) Approach to Child Support
- [387] The respondent did not provide funds to the claimant to support herself and the children since several months before the couple separated in January 2009.
- [388] The respondent concedes that an order for retroactive and ongoing child support is appropriate, based on the Guidelines.
- [389] The parties agree that the retroactive period will start as of April 1, 2009, as the claimant filed her claim in March.

- [390] The parties' daughter has been enrolled in university studies in another province since separation, returning home to live with the claimant in Vancouver during some breaks and summers.
- [391] The Guidelines calculate child support based on income. For income over \$150,000 the court may choose an amount that differs from Table support based on the approach in s. 4(b).
- [392] Here, both parties made submissions based on an approach that simply applied the base support payable under the Tables to the respondent's income, and then added to that amount an appropriate amount for s. 7 expenses.
- [393] Base child support prior for two children based on an income of \$450,000 from April 2009 would be \$5,721 per month until December 31, 2011, then \$5,884 per month after that. Child support for two children from April 2009 and all of the 2010, 2011, and 2012 years would total \$259,401 as retroactive base support.
- [394] The respondent argues that he should only pay the base child support in respect of the parties' son given that the parties' daughter was attending university in another province. He argues that base support for her is inappropriate, and that the approach to child support for the daughter should be based on s. 3(2)(b) of the Guidelines, citing *Neufeld v. Neufeld*, 2005 BCCA 7 at para. 42. He proposes that child support in relation to the daughter should be considered separately, calculated on the basis of her reasonable expenses for attending university, including costs of education and living, and then imputing to her an income in relation to summer employment.
- [395] According to *Wesemann v. Wesemann*, 1999 CanLII 5873 (B.C.S.C.), the usual Guidelines approach may be inappropriate where the child is attending school away from home because the parent receiving the child support payments will be relieved of some of financial responsibilities of a person living in the household, and the child has the ability to earn some income.
- [396] Given the very different circumstances of the parties' children, I accept the respondent's argument that the court should fashion two child support orders, one in relation to the son, based on Table support and s. 7 expenses; and one in relation to the daughter pursuant to s. 3(2)(b) of the Guidelines, based on her attending university away from home.
- (b) Base child support for the son
- [397] Base child support for one child based on an income of \$450,000 from April 2009 to the end of 2012 would be as follows: \$3,642 from April 2009 to December 2011, then \$3,543 per month for the year of 2012 and for the first three months of January 2013. This totals \$173,331 for the entire period.
- [398] I order that the respondent must pay retroactive base child support of \$173,331 in relation to the son.

[399] I order that as of April 1, 2013 forward the respondent must pay monthly base child support in relation to the parties' son of \$2,803 based on an imputed income of \$350,000.

(c) What is an Appropriate Amount for Extraordinary Expenses for the Son's Support?

[400] This family encouraged their children to engage in numerous extracurricular activities and to attend private schools and universities. Since separation the claimant has paid for these expenses. There is no question that some of these expenses are special or extraordinary expenses within the meaning of s. 7 of the Guidelines, for which the respondent should have contributed and for which he should have an ongoing obligation to contribute.

[401] The respondent argued that the claimant's evidence fell short of providing the necessary detail to support all of the extraordinary expenses claimed by her.

[402] However, the respondent concedes that the following are reasonable expenses: the son's tuition, uniform, golf, basketball, "AllBaller" and music fees charged to him in relation to his attendance and participation in activities at his private school. According to the respondent's submissions, these costs totalled \$73,059.74 for the years 2009-2012. He agrees that these should be shared by the parties. I find that these were reasonably incurred s. 7 expenses in relation to the son retroactively and that the same categories of expenses are appropriate s. 7 expenses going forward.

[403] In addition, the claimant incurred many other fees for the son's activities, including for various sports, camps, music, tutoring and artistic endeavours. She claims she incurs over approximately \$2,000 per month annually on these other fees, on top of the various school fees. The respondent argues that she has not provided supporting documentation for all of these expenses, that some of the expenses fall within the type of expense that is covered by basic child support as an ordinary expense, and that some of the activities are excessive.

[404] I find that the parties' son participates in many activities for which fees have been incurred and will continue to be incurred. He has been encouraged by his parents to be very active, the activities are quite admirable, and his parents can afford to support him in them. Based on the claimant's evidence and the documentation she has produced, I find that she incurred at least an additional \$2,000 per year on reasonable s. 7 expenses for the parties' son, and will continue to do so in the future while he is in high school. From 2009 through 2012, this adds up to another \$8,000 in appropriate s. 7 expenses.

[405] The respondent argues that s. 7 expenses should be shared equally retroactively. I disagree. Beginning in 2009, the claimant has had no income other than advances on capital as approved by the court, and I have taken these advances into account. I have concluded that the respondent enjoyed an annual income of \$450,000 during this period.

- [406] I will be addressing spousal support shortly. I consider it fair to allocate to the parents responsibility for the past s. 7 expenses based on pro-rata income: that which I have imputed to the respondent over the 2009-2012 time period, namely \$450,000; and the amount of spousal support retroactively awarded to the claimant. If the parties are unable to agree on these calculations, they have liberty to apply to the court.
- [407] Going forward, beginning as of January 2013, the parties are to share s. 7 expenses in relation to their son on an equal basis. These will include the same categories as identified above in relation to private school fees and activities, plus an additional \$2,000 per year, unless both parties agree to fund activities beyond this amount.
- [408] Also, for guidance, I consider it appropriate that if the parties' son engages in post-secondary education, that the parents support him in a similar way as my conclusions on reasonable expenses for the parties' daughter.
- (d) Child Support for the Parties' Daughter
- [409] The respondent argues that the following categories of expenses should be considered appropriate child support for the parties' daughter:
- (a) the daughter's tuition, meal plan fees and residence for any post-secondary education;
 - (b) supplies such as books;
 - (c) when the daughter has lived out of university residence, the amount of \$975 per month towards rent, \$400 per month towards food, and \$300 annually for utilities; and
 - (d) the daughter's Air Canada travel pass to allow her to visit home in Vancouver.
- [410] The respondent has added up the above expenses from 2009 through 2012, and his calculations total \$94,550.
- [411] The claimant has spent more money than this on the parties' daughter while she has attended university. She claims she has spent approximately \$158,600.
- [412] The respondent's figures are bare bones and, in the absence of paying for base child support, do not take account of such things as health care expenses.
- [413] The respondent argues that a university student has an obligation to contribute to expenses by working in the summers. I agree. However, the respondent's approach to expenses fails to recognize the cost of living of the daughter when she returns to spend holidays and summers living with the claimant.
- [414] The claimants' figures allocate excessive rent costs in some of the later years and some costs for items that were not proven on the evidence.
- [415] Weighing all the pluses and minuses, I conclude that the father's figure of \$94,550 is the appropriate figure on which to base retroactive support for the parties' daughter.

- [416] I consider that all of this should be borne by the respondent retroactively. I consider this fair because: these expenses are being paid in lieu of Guidelines Table child support for the daughter; the claimant still maintained a home for the daughter so that her daughter could stay with her and the parties' son when she returned regularly to Vancouver; the claimant incurred several of her own out-of-pocket expenses assisting the daughter in making the transition to university; and the claimant had no income during this period.
- [417] Going forward, the court heard evidence that the parties' daughter was to complete her degree by December 2012. It was uncertain whether she would then seek employment or seek graduate studies.
- [418] If the claimant's position is that the parties' daughter is still a "child of the marriage" after December 2012, then the claimant may apply for additional child support in relation to her.
- [419] I will otherwise make no order for ongoing child support in relation to the daughter.
9. What is an Appropriate Amount of Spousal Support, Retroactive and Ongoing, that should be paid by the Respondent?
- [420] In his written and oral submissions, the respondent conceded that the claimant is entitled to spousal support from January 2009 to present, based on her role in the marriage, especially as primary caregiver to the children.
- [421] He argues however that she failed in her obligation to take steps towards self-sufficiency. I disagree. I find that the claimant had no ability to become self-sufficient during the years since separation because: she was unable to access the parties' capital assets other than for living expenses; she was still primary caregiver for the parties' son; she is virtually unemployable in Canada.
- [422] I find that the claimant was entitled to spousal support based on her role in the marriage and imputing an income of \$450,000 to the respondent and \$0 income to the claimant.
- [423] As for ongoing spousal support, based on my conclusions regarding the division of property and compensation orders, I conclude that the claimant will be in position to support herself in the future, using the assets in her name and the proceeds of compensation payments due to her from the respondent. I conclude that future spousal support is therefore not necessary.
- [424] I have considered the Spousal Support Advisory Guidelines which indicate a range between \$11,000 and \$13,000 per month approximately. The Guidelines are not necessarily strictly applicable in the present case given the circumstances of these parties.
- [425] Calculating the amount of retroactive spousal support requires consideration of a number of factors: the respondent's imputed income; the parties' ages; child support and extraordinary expenses ordered paid; the expenses to maintain the Canadian properties owned by the parties, which were paid after separation; and the fact that spousal support is going to be limited to the time period between separation and present despite the long

marriage and the claimant's role in the marriage, but due to the division of assets which I expect will provide the claimant with financial security. I have considered the parties' lifestyle during the marriage, and the respondent's lifestyle after the marriage.

- [426] I conclude that an appropriate amount of spousal support retroactively is \$12,000 per month. The total from January 2009 to and including March 2013 (51 months) is \$612,000. This amount is due from the respondent to the claimant in a lump sum as retroactive spousal support. I do not consider this to be a hardship as he has sufficient assets to be able to raise these funds.
10. Should the Respondent be Permitted to take the Parties' Son on a Trip to Korea?
- [427] Since separation, the parties have been able to reach agreement regarding custody and access and guardianship of the children.
- [428] The parties' son currently spends more than 60% of his time in the claimant's primary custody. When the oldest child returns from university to visit, she spends the majority of her time with the claimant as well and not with the respondent.
- [429] The parties agree that on an ongoing basis, their son will continue to live with the claimant, and with the respondent having liberal access to the son. What happens now and is expected to continue is that the respondent will make arrangements directly with the son for access.
- [430] As well, the parties agree that there should be an order for joint guardianship of the children on what is known as the "Joyce model", with the claimant having initial power to make the decisions in case of disagreement.
- [431] The evidence supports the conclusion that these arrangements are in the best interests of the children and I so find.
- [432] The one sticking point on custody and access issues has to do with the respondent's wish to take his son on a trip with him to Korea. The claimant does not agree to such a trip while the son is under the age of majority.
- [433] From 2000 to 2006 the claimant took the children on an annual trip to Korea, for about ten days each time, and so they had a chance to visit their country of origin and their relatives.
- [434] The reason she opposes the respondent taking the son with him to Korea is that she is afraid that the respondent will seek to hurt her by keeping the son in Korea and she does not trust that the laws of Korea will enforce this court's orders regarding custody.

[435] The reason for the claimant's fears and lack of trust of the respondent has to do with actions by the respondent during the marriage and post-separation. In summary, these actions indicate to her that the respondent is controlling and sought to dominate her during the marriage, has difficulty controlling his anger and his drinking, and is vindictive and wishes to punish her for standing up to him through these matrimonial proceedings. She points to the following examples:

- (a) during the marriage the respondent occasionally beat the claimant. Often this occurred when he was extremely drunk;
- (b) on some of the occasions when the respondent was violent with the claimant, their son was present. Even though he was not big enough to stop his father, the son sometimes tried to intervene. The son often was left emotionally distraught by these violent episodes;
- (c) after the marriage break-up, the respondent acted vindictively towards the claimant by throwing out her personal clothes and shoes, and by evicting her mother and brother from the Ilsan Apartment; and
- (d) the respondent has refused to comply with court orders in this proceeding.

[436] The respondent argued that any past conduct between him and the claimant during their marriage is irrelevant to the question of whether or not he should be permitted to take their son on a trip to Korea. I disagree. This history is relevant, because it does support the conclusion that there is reason for the claimant to be afraid of the respondent, and to be afraid that he will not act reasonably if he is outside the jurisdiction of this court.

[437] As mentioned earlier, I found the claimant to be a credible witness. While she never spoke at length regarding the respondent's past conduct, she was clearly upset when she had to describe it. She physically trembled at parts of her evidence that were particularly sensitive, regarding her children or regarding evidence of the respondent's mental or physical abuse. I did not feel that she was seeking to amplify her concerns. I conclude that she will be extremely fearful and anxious if the respondent is allowed to take their son with him to Korea while the son is still a minor, and that these fears and anxiety are reasonably based.

[438] Furthermore, added to the factors I have mentioned is the factor of the respondent's attitude towards women generally. How this might play out when he is in charge of his son in Korea does add to the concerns raised by the claimant.

[439] The respondent offered to take his daughter to Korea at the same time to assuage any concerns. This is not an acceptable solution. The parties' daughter has not indicated that she wants to be put in this supervisory position. There is also reason to believe that the respondent will not respect the wishes of his daughter if she disagrees with something in Korea, as he believes that a daughter should obey her father.

- [440] The respondent made it plain that in his view, a woman has very little say in Korean culture: she must obey her husband's opinion and do what he tells her to do. Pressed to explain this further, he went on to testify that in Korea there is an old saying that a woman before marriage will obey her father, a woman after marriage will obey her husband, and after giving birth to a son and the son is old enough, then a woman will be obedient to her son. I have to give credit to the respondent for being so frank about his attitude. I make no finding that this is indeed part of Korean culture, but it is certainly alien in the Canadian cultural context where equality is a fundamental cultural and legal value. It also means that the parties' daughter is unlikely to have much if any influence on her father if she accompanies him and the parties' son to Korea, and so there is no point in making her the supervisor of that trip.
- [441] It is interesting that the respondent did not argue that taking his son to Korea was in the best interests of the son. There is no evidence that the son feels it is important to go to Korea. I cannot see how it would be in the circumstances where it will so upset the son's primary caregiver, his mother, and where her upset and distrust of the respondent is reasonably based on the respondent's own conduct and attitude.
- [442] I find that there is reason to be concerned about the respondent's possible misconduct if the respondent feels he has the son under his control outside of this country and in Korea which does not have an enforceable child custody treaty with Canada. I do not think he would deliberately try to physically hurt the son, but the history here suggests to me that there is a measureable risk that he might enjoy taking steps that would cause the claimant expense and anguish, such as putting her through the cost and misery of having to try to get her son back from Korea. I make no finding that he would indeed do so, but I find that the evidence of this risk outweighs evidence of any potential benefit to the son.
- [443] I therefore decline to grant the respondent's request that he be allowed to take his son to Korea.

11. Other Issues

- [444] I have not addressed the claimant's uncontroverted evidence that the respondent threw out her clothes after separation, as I do not have evidence to ascribe a value to this. Furthermore, I consider that in the overall result, the claimant will be adequately compensated by the other orders I have made.
- [445] I have not addressed the appropriate guardianship terms under the new Family Law Act, S.B.C. 2011, c. 25, which has come into force since the date of trial. The parties did not have any disagreement on guardianship when they appeared before me, other than the one issue regarding whether or not the son could travel with the father to Korea. I do not anticipate that my conclusions dealing with that issue would change under the new Act, but if the parties do have submissions to make in this regard, they are at liberty to seek a further hearing before me. Otherwise, I would expect the roles of the parties with respect to parenting arrangements for their children would continue on the same basis as before

trial.

[446] The parties agree that there should be an order restraining the respondent in respect of his interactions and communications with the claimant, on similar terms as in the interim order of Cullen J. made in this proceeding on March 24, 2009.

[447] I also grant the parties a divorce.

General Comments

[448] For the sake of simplicity, I have not spelled out the full legal descriptions of each of the properties at issue. However, if there is any disagreement on those descriptions, the parties can seek a further hearing or written submissions before me.

[449] I wish to make an observation about the volume of documents filed in this case. The parties filed a large number of binders of documents as exhibits during the trial, by agreement. This is a common practice, meant to speed up the hearing of oral evidence during the trial.

[450] With the expectation that the documents were going to be referred to by a witness, or at a minimum, in submissions where the impact of the evidence was agreed, I allowed these volumes of documents to be marked as exhibits. In hindsight, I now consider this to have been less than helpful.

[451] Unfortunately there were vast volumes of documents filed as exhibits to which there was no reference by any witness and either no reference in final argument or no agreement as to how they could be interpreted. I presume the documents were filed by counsel just in case they needed them during examination of a witness, but it turned out that they did not refer to many of them. Those documents that were referred to were scattered throughout the numerous binders.

[452] I believe in large part the evasive and belated document discovery of the respondent contributed to this problem, as it made it very difficult for the claimant's counsel to present an accurate picture of the respondent's finances.

[453] I wish to note, as a practice point for future consideration, that it is difficult for a trial judge to conduct a forensic examination of thousands of pages of documents without very detailed and organized assistance either from expert evidence or submissions from counsel. I make these observations without intending to be critical of counsel, who I observed worked very hard and were very professional in their presentation of the case. Legal counsel also provided numerous helpful written submissions

[454] Also, many books of pleadings were handed up to the court at the start of trial. These contained such things as prior affidavits sworn by the parties. I note that I do not consider these affidavits to be part of the evidence in the trial. If a particular passage of an affidavit was put to a witness, the witness's response to that passage did become part of the oral evidence. For example, a prior inconsistent statement in an affidavit may have been

admitted by a witness when it was put to the witness, and then that prior inconsistent statement became part of the evidence. But the rest of the affidavit did not.

Conclusions

[455] For ease of reference, I will summarize the conclusions I have reached on the key disputed issues.

[456] The respondent's interest in the following Korean Properties are family assets:

- (a) Paldal Property;
- (b) Anjung Property;
- (c) Jangnan Property;
- (d) Suwon business;
- (e) Ilsan Apartment;
- (f) Dongtan/Bansong Properties.

[457] In addition, the respondent's Korean Pension is a family asset, as is key money owed to him in respect of his sister's apartment.

[458] The gross value of the Korean family assets is \$16,579,426.

[459] The gross value of the Allison Road property, which is one of the family assets, is \$6,900,000.

[460] The gross value of the Canadian family assets, including the Allison Road property, is \$9,134,358.

[461] I have reapportioned assets and made compensation orders to approximate equal division of family assets, but taking into account certain debt and advances and expenditures by the parties. Reapportionment will not take into account the fact that the Korean Properties came to the respondent by way of gifts and inheritance.

[462] Reapportionment of family assets will be accomplished as follows:

- (a) The claimant will retain the Canadian family assets (the Allison Road property, the remaining trust funds representing proceeds of sale of the Brought Street property and the Cordova Street property, the respondent's RRSP by way of spousal rollover, the piano and two Gordon Smith paintings);
- (b) The respondent will retain the Korean Assets, as well as the furnishings in his possession;
- (c) The respondent will make a compensation payment to the claimant of \$3,406,221 (less advances received by her since September 2012 that were funded by the TD line of credit debt);

- (d) The respondent will make a compensation payment to the claimant of one-half the TD line of credit debt, which half-share is approximately \$473,413 (subject to adjustment to take account of any interest on that debt accruing to date of this judgment, and prior to payment);
- (e) the parties are to divide equally any balances in any bank account that they hold jointly, and each side may retain the bank accounts in his or her sole names (with the exceptions of the order I have made regarding the respondent's RRSP);
- (f) each side may retain the vehicles in his or her name and will be responsible for personal debts not otherwise mentioned; and
- (g) the RESP for the parties' son will be divided equally.

[463] For purposes of child and spousal support, the respondent is imputed an income of \$450,000 up to March 2013. He is imputed an income of \$350,000 hereafter to account for his reduced asset base as a result of the orders I have made regarding property division.

[464] I order that the respondent must pay retroactive base child support of \$173,331 in relation to the son.

[465] I order that as of April 1, 2013 forward the respondent must pay base child support in relation to the parties' son of \$2,803 based on income of \$350,000.

[466] I have made a number of orders regarding extraordinary expenses relating to the son:

- (a) The following types of expenses are s. 7 extraordinary expenses: the son's tuition, uniform, golf, basketball, "AllBaller" and music fees charged to him in relation to his attendance and participation in activities at private school. On top of those expenses, I have found that there is an additional \$2,000 per year incurred as extraordinary expenses for the son.
- (b) The parties are to share these s. 7 expenses equally as of January 2013.
- (c) The retroactive extraordinary expenses in relation to the son for the years up to the end of 2012, are \$73,059.74 plus \$8,000.
- (d) The respondent is to pay to the claimant his proportionate share of the retroactive s. 7 expenses based on his imputed income of \$450,000 and, as the claimant's income, the annual spousal support I have ordered as retroactively payable by the respondent. If the parties are unable to agree on this calculation, they have liberty to apply.

[467] The respondent is to pay \$94,550 as retroactive child support for the parties' daughter.

[468] If the claimant's position is that the oldest child is still a "child of the marriage" after December 2012, then the claimant may apply for additional child support in relation to her.

[469] The respondent is to pay \$612,000 as retroactive spousal support. There will be no ongoing spousal support obligation.

[470] The respondent is not permitted to take the parties' son to Korea.

[471] There will be an order restraining the respondent in respect of his interactions and communications with the claimant, on similar terms as in the interim order of Cullen J. made in this proceeding on March 24, 2009.

[472] The parties are divorced.

[473] The parties may seek a further hearing before me to speak to costs if they are unable to agree on the same.

"S.A. Griffin, J."

The Honourable Madam Justice Susan A. Griffin

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/05/2013BCSC0587.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kim-v-hong-2013>

Prepared on 29 October 2026 · Esheria